



CMIPS II
REQUEST FOR PROPOSAL
HHSDC 4130-141A
Addendum 5

Section 11
CONTRACT

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

TABLE OF CONTENTS

1	DEFINITIONS	9
2	SCOPE OF WORK.....	9
3	TERM.....	9
4	DELIVERABLES	9
4.1	EFFECT OF ACCEPTANCE.....	9
4.2	ACCEPTANCE.....	10
5	FINANCIAL MATTERS	10
5.1	PAYMENT	10
5.2	INVOICES	10
5.2.1	<i>State Project Manager Approval</i>	<i>10</i>
5.2.2	<i>Inclusion of Contract Number</i>	<i>11</i>
5.2.3	<i>Information Required.....</i>	<i>11</i>
5.2.4	<i>Incorrect Invoices</i>	<i>11</i>
5.3	INVOICING EVENTS	11
5.4	WORK AUTHORIZATIONS	12
5.5	NO INCREASES	12
5.6	NON-APPROPRIATION OF FUNDS.....	12
5.7	TRANSPORTATION AND INSURANCE CHARGES	12
5.8	TAXES	13
5.9	CONTRACTOR EXPENSES	13
5.10	MOST FAVORED CUSTOMER.....	13
5.11	OVERPAYMENTS TO CONTRACTOR.....	13
5.12	CREDITS AND RIGHT TO SET OFF	13
5.13	ADVANCE PAYMENTS PROHIBITED	13
5.14	PAYMENTS TO SUBCONTRACTORS.....	14
5.15	SUPPLEMENTAL CONTRACTS.....	14
5.16	UNION ACTIVITIES	14
5.17	REDUCTION IN PRICE.....	14
6	EQUIPMENT	14
6.1	MAIN SYSTEM COMPONENTS	14
6.1.1	<i>Placement of CMIPS II Main System Processing Platform Components</i>	<i>14</i>
6.1.2	<i>Purchase of Equipment.....</i>	<i>15</i>
6.1.3	<i>Title to Equipment.....</i>	<i>15</i>
6.1.4	<i>Option to Purchase from Third Party.....</i>	<i>15</i>
6.1.5	<i>Installation.....</i>	<i>15</i>
6.1.6	<i>Certification of Readiness.....</i>	<i>16</i>
6.1.7	<i>CDSS-Adult Programs Branch (APB) and County Forms Architecture - Installation and Certification</i> <i>16</i>	
6.1.8	<i>Option to Purchase CDSS-APB Equipment.....</i>	<i>16</i>
6.2	MAINTENANCE	17
6.3	DELIVERY	17
6.4	PACKING AND SHIPMENT.....	17
6.4.1	<i>Transportation Costs and Other Fees or Expenses</i>	<i>18</i>
6.5	SUBSTITUTIONS	18
6.6	ACCESS	18
6.7	PROTECTION FROM DAMAGE	18
6.8	CODES	18
6.9	STATE OBLIGATION TO PROCURE.....	18

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

6.10	SUPPLIES	18
6.11	CAPACITY MANAGEMENT PLAN.....	19
7	WARRANTIES	19
7.1	SYSTEM AND SERVICES	19
7.2	PRICE	20
7.3	EQUIPMENT	21
7.4	FOUR-DIGIT DATE COMPLIANCE.....	21
7.5	NO VIRUSES OR DISRUPTIVE SOFTWARE.....	21
7.6	COVENANT AGAINST GRATUITIES.....	21
7.7	GOOD STANDING.....	22
7.8	POWER AND AUTHORITY	22
8	ADDITIONAL RIGHTS AND REMEDIES	22
8.1	LIQUIDATED DAMAGES – GENERAL	22
8.1.1	<i>Acknowledgement of Harm</i>	22
8.1.2	<i>Payment of Liquidated Damages</i>	22
8.1.3	<i>Other Remedies</i>	22
8.2	LIQUIDATED DAMAGES – SPECIFIC AMOUNTS	23
8.2.1	<i>Corrective Action Plans</i>	23
8.2.2	<i>Deliverables</i>	23
8.2.2.1	Deliverable Expectation Document	23
8.2.2.2	Master Work Plan	23
8.2.2.3	System Development Plan	24
8.2.2.4	Project Maintenance Plan.....	24
8.2.2.5	Operations Plan.....	24
8.2.2.6	System Requirements Evaluation Report.....	24
8.2.2.7	Documentation.....	24
8.2.3	<i>Failure to Correct a Defect</i>	25
8.2.4	<i>Security Access</i>	25
8.2.5	<i>Schedule Performance Index</i>	25
8.2.6	<i>Performance Standards</i>	25
8.2.6.1	Payroll Services Performance	25
8.2.6.2	CMIPS II System Online Availability	26
8.2.6.3	CMIPS II System Response Times	26
8.2.6.4	CMIPS II User Response Times	27
8.2.7	<i>Staff</i>	27
8.2.8	<i>Turnover Services</i>	28
8.2.9	<i>Payment Withhold – Design, Development, and Implementation Phase (DDI)</i>	28
8.2.10	<i>Release of Payment Withholds</i>	28
8.2.11	<i>Conditions for Termination of Liquidated Damages</i>	28
8.3	DEDUCTIONS FOR ERRORS IN PROCESSING PAYMENTS	29
8.4	DEDUCTIONS FOR UNAUTHORIZED SYSTEM ACCESS.....	29
8.5	REDUCTIONS IN PAYMENTS DUE.....	29
8.6	COVER.....	29
8.7	RIGHT TO INSPECTION	29
8.8	STOP WORK	29
8.8.1	<i>Issuance of Stop Work Order</i>	29
8.8.2	<i>Cancellation of Stop Work Order</i>	30
8.9	PERFORMANCE BOND.....	30
9	WORK AUTHORIZATIONS.....	31
9.1	GENERAL.....	31
9.2	SERVICE REQUESTS TO WORK AUTHORIZATION	31
9.3	WORK AUTHORIZATIONS INCLUSION IN CONTRACT	32

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

9.4	WORK AUTHORIZATION STOP WORK.....	32
9.5	DISAGREEMENT, CLAIMS AND TERMINATION	32
9.5.1	Disagreement.....	32
9.5.2	Claims.....	32
9.5.3	Termination and Cover.....	33
10	INSURANCE.....	33
10.1	LIABILITY AND AUTO INSURANCE.....	33
10.2	WORKER’S COMPENSATION COVERAGE	33
10.3	SUBCONTRACTORS	34
10.4	PREMIUMS	34
10.5	CERTIFICATES	34
11	STATE PROPERTY.....	34
11.1	OWNERSHIP	34
11.2	USE OF PROPERTY	34
11.3	DAMAGE TO PERSONS OR PROPERTY.....	34
11.4	NOTICE OF DAMAGE.....	34
11.5	SURRENDER OF PROPERTY	35
12	CONFIDENTIAL INFORMATION	35
12.1	ACCESS AND NONDISCLOSURE OBLIGATION	35
12.2	PROTECTIVE MEASURES.....	35
12.3	SECURITY REQUIREMENTS	35
12.4	UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.....	35
12.5	PUBLIC RECORDS REQUEST.....	36
12.6	EXCEPTIONS	36
12.7	WRITTEN STAFF AGREEMENTS	36
12.8	SURVIVAL	36
13	OWNERSHIP AND RIGHTS.....	36
13.1	STATE OWNERSHIP.....	36
13.2	FEDERAL AND OTHER LICENSES	37
13.3	CONTRACTOR OWNERSHIP.....	37
13.3.1	Encryption/CPU ID Authorization Codes.....	37
13.3.2	Future Releases.....	38
13.4	RIGHTS IN DATA.....	38
13.5	PROTECTION OF CONTRACTOR PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA	39
13.6	LICENSES	39
13.6.1	License by Contractor.....	39
13.6.2	License from the State	39
14	INDEMNIFICATIONS AND LIMITATION OF LIABILITY	40
14.1	INDEMNIFICATION	40
14.2	OTHER CLAIMANTS	41
14.3	INTELLECTUAL PROPERTY.....	41
14.3.1	State’s Use of Deliverables	41
14.3.2	Third Party Obligation.....	41
14.3.3	State Remedies	42
14.3.4	Restrictions on Use	42
14.3.5	Certification.....	42
14.4	FEDERAL SANCTIONS OR PENALTIES	42
14.5	LIMITATION OF LIABILITY	43
14.6	CONTRACTOR’S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY	43

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

15	TERMINATION	44
15.1	CONTRACTOR’S RIGHTS OF TERMINATION	44
15.2	STATE’S RIGHTS OF TERMINATION.....	44
15.2.1	<i>Funding Changes</i>	<i>44</i>
15.2.2	<i>Default</i>	<i>44</i>
15.2.3	<i>Gratuities</i>	<i>45</i>
15.2.4	<i>Inability to Correct Defects during Cure Period</i>	<i>46</i>
15.2.5	<i>Inability to Correct Defects during User Acceptance Testing</i>	<i>46</i>
15.2.6	<i>Defects during Pilot Operation.....</i>	<i>46</i>
15.2.7	<i>Defects during Statewide Implementation Review</i>	<i>47</i>
15.2.8	<i>CMS Requirements.....</i>	<i>47</i>
15.2.9	<i>Cover.....</i>	<i>47</i>
15.2.10	<i>Wrongful Termination for Default</i>	<i>48</i>
15.3	TERMINATION FOR CONVENIENCE.....	48
15.4	TERMINATION BY MUTUAL AGREEMENT	48
15.5	TERMINATION PROCEDURE	48
15.5.1	<i>Available Rights and Remedies.....</i>	<i>48</i>
15.5.2	<i>Disposition of Property.....</i>	<i>49</i>
15.5.3	<i>Contractor Compensation.....</i>	<i>49</i>
15.5.4	<i>Withholds and Offsets</i>	<i>49</i>
15.5.5	<i>Determination of Amount Due</i>	<i>49</i>
15.5.6	<i>Termination Claims.....</i>	<i>49</i>
15.5.7	<i>Assistance During Termination.....</i>	<i>49</i>
15.5.8	<i>Contractor Actions After Notice of Termination.....</i>	<i>50</i>
16	GENERAL PROVISIONS	50
16.1	AMERICANS WITH DISABILITIES ACT	50
16.2	ASSIGNMENT	50
16.3	ASSIGNMENT OF ANTITRUST ACTIONS	50
16.4	ATTORNEYS’ FEES AND COSTS.....	51
16.5	AUTHORITY	51
16.6	AUTHORIZATION	51
16.7	BINDING EFFECT	51
16.8	CHILD SUPPORT COMPLIANCE ACT.....	51
16.9	SAFETY AND ACCIDENT PREVENTION	52
16.10	ORDER OF PRECEDENCE	52
16.11	CONFLICT OF INTEREST	52
16.11.1	<i>Appearance of Conflict</i>	<i>52</i>
16.11.2	<i>Current or Former State Employees</i>	<i>52</i>
16.12	DISPUTE RESOLUTION	53
16.12.1	<i>Process.....</i>	<i>53</i>
16.12.2	<i>Final Decision.....</i>	<i>54</i>
16.13	DRUG-FREE WORKPLACE CERTIFICATION	54
16.14	ENTIRE AGREEMENT	54
16.15	SWEATFREE CODE OF CONDUCT	55
16.16	FORCE MAJEURE	55
16.17	APPLICABLE LAW.....	55
16.18	HEADINGS	56
16.19	INDEPENDENT CONTRACTOR RELATIONSHIP.....	56
16.20	COMPLIANCE WITH STATUTES AND REGULATIONS.....	56
16.21	LITIGATION	56
16.21.1	<i>Notice of Litigation</i>	<i>56</i>
16.21.2	<i>Costs.....</i>	<i>56</i>
16.22	MAINTENANCE AND AUDIT OF RECORDS	56

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

16.22.1	Maintenance of Records.....	56
16.22.2	Right to Audit.....	57
16.22.3	Notice of Review	57
16.22.4	Data and Materials Property of the State	57
16.22.5	Subcontracts.....	58
16.23	CONTRACT MODIFICATION	58
16.24	NONDISCRIMINATION	58
16.25	NOTICE OF DELAY	58
16.26	NOTICES	58
16.27	PUBLICITY	59
16.28	NEWS RELEASES	59
16.29	REMEDIES	59
16.30	SEVERABILITY	59
16.31	SUBCONTRACTORS	60
16.31.1	Process.....	60
16.31.2	Subcontractor Warranty	60
16.32	REFERENCE CHECK ON CONTRACTOR AND SUBCONTRACTOR STAFF.....	60
16.33	SURVIVAL	60
16.34	THIRD PARTY BENEFICIARIES	61
16.35	COUNTIES ARE INDEPENDENT ENTITIES	61
16.36	WAIVER OF RIGHTS	61
16.37	WATER OR AIR POLLUTION VIOLATION	61
16.38	PRIORITY HIRING CONSIDERATIONS	61
16.39	FOLLOW-ON CONTRACTS.....	61
16.39.1	Prohibition.....	61
16.39.2	Application.....	62
16.40	NATIONAL LABOR RELATIONS BOARD CERTIFICATION	62
16.41	RECYCLING	62
16.42	EXPATRIATE CORPORATIONS	62
16.43	DOMESTIC PARTNERS.....	62
16.44	USE TAX COLLECTION	63
EXHIBIT 1: STATEMENT OF WORK		64
EXHIBIT 2: SYSTEM REQUIREMENTS.....		65
EXHIBIT 3: DELIVERABLES AND MILESTONES.....		66
EXHIBIT 4: RATES AND PRICING.....		67
EXHIBIT 5: CERTIFICATIONS		68
EXHIBIT 6: PERFORMANCE BOND OR LETTER OF CREDIT		70
EXHIBIT 7: FEDERAL ASSURANCES—NONCONSTRUCTION PROGRAMS		71
EXHIBIT 8: VENDOR’S PROPOSAL		73
EXHIBIT 9: GLOSSARY AND ACRONYMS.....		74
EXHIBIT 10: HIPAA BUSINESS ASSOCIATE AGREEMENT.....		75

LIST OF TABLES

TABLE 1. PAYROLL SERVICES	26
TABLE 2. SYSTEM RESPONSE TIMES.....	27
TABLE 3. USERS RESPONSE TIMES	27

ADDRESS	
---------	--

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

Definitions for terms in this Contract shall be as stated in Exhibit 9, Glossary and Acronyms which is incorporated into and made a part of this Contract as though fully set forth herein, and as provided throughout the document.

2 SCOPE OF WORK

Contractor shall design, develop, implement, operate, and maintain as more specifically provided in Exhibit 1, Statement of Work a comprehensive Case Management, Information and Payrolling System (CMIPS II) for the Personal Care Services Program/In-Home Supportive Services (IHSS) Plus Waiver/IHSS Residual Program (PCSP/IPW/IHSS-R) and provide CMIPS II services and support to the California Health and Human Services Agency Data Center (HHSDC) hereinafter referred to as the “State,” on behalf of the California Department of Social Services (CDSS), as described herein.

3 TERM

The term of this Contract shall begin on the Execution Date and shall continue for seven years thereafter, unless terminated earlier as provided herein. The State reserves the option to extend the term for three additional periods of one year each at the cost for that year specified in Exhibit 4, Rates and Pricing, upon 180 days prior Notice to Contractor of its intent to extend this Contract for the first extension, and upon 90 days prior Notice to Contractor for each extension thereafter. Any extension of the term of this Contract is effective upon the State’s sending Notice as required by this Contract.

This Contract shall not be effective until the State receives written approval provided by the Centers for Medicare and Medicaid Services (CMS) pursuant to 45 CFR 95.611, and approval by the California Department of General Services.

4 DELIVERABLES

The Contractor shall develop and deliver all Deliverables listed in Exhibit 3 – Deliverables and Milestones and all Deliverables listed in the Master Work Plan pursuant to Paragraph 3.1.2 of the Statement of Work, Exhibit 1 of this Contract.

4.1 Effect of Acceptance

The parties acknowledge and agree that the Acceptance of a Deliverable indicates only that the State has reviewed the Deliverable and has detected no Defects at that time and that Acceptance of a Deliverable shall not change, waive, or in any way lessen the Contract requirements. The Parties agree that Contract requirements shall be modified only through a Work Authorization or an amendment to this Contract.

4.2 Acceptance

The State Project Manager's Acceptance of a Deliverable that constitutes a payable event as provided herein will entitle Contractor to submit, and obligate the State to pay, a correct invoice for payment in accordance with this Contract.

5 FINANCIAL MATTERS

5.1 Payment

Unless otherwise specified, payment shall be made in accordance with State of California Government Code Section 927 et seq., as applicable. Payment shall not be due until the receipt of an invoice for the completion of a sub-phase as defined herein, an Accepted Deliverable or Service. An invoice for a sub-phase, Deliverable, or Service received by the State before the Acceptance of that sub-phase, Deliverable, or Service, is in dispute and will not be due and payable by the State until Acceptance of the sub-phase, Deliverable, or Service. Deliverables during Design, Development, and Implementation (DDI) are subject to a 10% withhold until acceptance of the entire system.

The State shall have the right to withhold or delay payments to Contractor, in whole or in part, if Contractor fails to perform its obligations set forth in this Contract.

5.2 Invoices

Invoices shall be submitted the month following the month in which the charges are incurred. Work shall be paid at the applicable Contract rate in effect at the time the work is performed.

Invoices for the DDI phase, Maintenance Releases, Equipment, and Software for the System become due as provided herein, at Paragraph 5.3, Invoicing Events.

For the maintenance portion of the Maintenance and Operation (M&O) phase, the Contractor can invoice for System Maintenance and Enhancements Services based upon successful completion and State Acceptance of each CMIPS II Maintenance Release (Statement of Work, Paragraph 4.3.5, Release Management). Payment shall be for Contractor's actual cost not to exceed the estimate amount provided by Contractor and approved by the State Project Manager. The Contractor shall not be paid for the costs associated with correcting System Defects.

5.2.1 State Project Manager Approval

All invoices submitted must be approved by the State Project Manager or his or her designee prior to payment. Contractor must submit an original invoice and two copies that shall specify the amount due and in which Contractor has certified that Services or Equipment provided under the invoice conform to the requirements set forth in this Contract. Invoices shall not be submitted more frequently than monthly to the State. Invoices payable by the State shall be submitted to:

Health and Human Services Data Center
P. O. Box 168025
Sacramento, CA 95816
Attention: Accounting Office

5.2.2 Inclusion of Contract Number

All invoices, bills of lading, shipping memos, packages, and any other form of correspondence shall refer to this Contract by number plus any unique identifier generated by the State on a Work Authorization.

5.2.3 Information Required

Invoices shall meet all State Project Manager or his or her designee requirements as to form and content and account for each billable item by description and cost.

Invoices for Equipment shall account for each item by model number, serial number, and physical location with applicable costs broken down by item price and applicable sales tax. Contractor may provide such Equipment details electronically. The State and Contractor may mutually agree upon additional invoice elements.

For Maintenance Releases, the Invoice shall provide evidence of the actual hours worked by position and cost for each CMIPS II Modification and Maintenance Release compared to the approved estimated effort and budget.

For fixed-rate Services, the Invoice shall include the unit cost, number of units, and total cost incurred for the billing period.

5.2.4 Incorrect Invoices

Contractor shall make every effort to reconcile incorrect invoices in a timely manner, not to exceed 30 days from Notice by the State of a discrepancy. The State shall withhold payments for disputed invoices until the discrepancies have been resolved.

5.3 Invoicing Events

During the Design, Development and Implementation (DDI) phase of the Project, the Contractor can invoice the fixed-price cost from Exhibit 4, Rates and Pricing for each sub-phase specified below based upon successful completion and State Acceptance of each sub-phase as measured by the following milestone reviews (Exhibit 1, SOW Paragraph 5.3.4.3, Milestone Reviews):

1. System Requirements Validation Phase measured by the System Requirements Validation Review
2. General System Design Phase measured by the General System Design Review
3. Detailed Design Phase measured by the Detailed Design Review
4. Coding and Documentation Phase measured by the Coding and Documentation Review
5. Integration Test Phase measured by the Integration Test Review
6. Functional Test Phase measured by the Functional Test Review
7. User Acceptance Test Phase measured by the User Acceptance Test Review
8. Pilot Operation Phase measured by the Pilot Operation Review
9. Release Readiness Phase measured by the Release Readiness Review
10. Site Deployment Phase measured by the Post Site Implementation Reviews (per site)
11. Completion of DDI phase as measured by the Post Statewide Implementation Review

The State will withhold 10 percent of the fixed-cost of each DDI sub-phase or Deliverable and pay it to the Contractor upon successful completion of the entire DDI phase as measured by the Post Statewide Implementation Review.

For the DDI phase and except for hardware and software installed at CDSS Adult Programs Branch (APB), Contractor may not invoice the State for hardware and software costs, including any maintenance and licensing agreements, necessary to implement the terms of this Contract prior to successful completion of Pilot Operation Review.

For the Maintenance and Operation (M&O) phase, the Contractor may submit a monthly invoice based upon Services that the Contractor provided for that month at the rates provided in Exhibit 4 – Rates and Pricing.

Contractor shall not submit an invoice and will not be compensated for costs associated with preparing or executing a Corrective Action Plan (CAP) or otherwise correcting any Defects in the System.

5.4 Work Authorizations

Work Authorizations shall be billed monthly in arrears following the month the Contractor completes the Work Authorization. No invoice for Work Authorization will be due and payable by the State until Acceptance of the Deliverable or Services provided. An invoice for a Work Authorization received by the State before Acceptance of the Deliverable or Services provided is in dispute and will not be due and payable by the State until Acceptance of the Deliverable or Service. Contractor shall not charge the State for preparing a Work Authorization.

5.5 No Increases

Contractor shall not increase the rates listed in Exhibit 4 – Rates and Pricing during the term of this Contract.

5.6 Non-appropriation of Funds

Payment pursuant to this Contract, whether in whole or in part, is subject to and contingent upon the continuing availability of Federal and State funds through the Federal and State Budget processes for the purposes hereof. If such funds or any part thereof, become unavailable, the State, in addition to any other remedies, may:

1. Issue a stop work order for this Contract or the portion affected thereby;
2. Issue a Work Authorization; or
3. After providing Contractor written Notice, as soon as the unavailability of funds becomes known to the State, terminate this Contract under Paragraph 15, Termination, of this Contract and make payment to Contractor as provided in Paragraph 15.2.1, Funding Changes, of this Contract.

5.7 Transportation and Insurance Charges

The costs associated with transportation, delivery and insurance of each Deliverable, if any, shall be paid for by Contractor and shall not be charged to the State.

5.8 Taxes

Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay Contractor for any State or local sales or use taxes imposed on the Services rendered or goods supplied to the State pursuant to this Contract. However, Contractor must pay all other applicable taxes including, but not limited to, taxes based on Contractor's income or personal property taxes levied or assessed on Contractor's personal property to which the State does not hold title. The prices listed in Exhibit 4 – Rates and Pricing shall include all applicable Federal, State, and local taxes and duties in existence as of the date this Contract is submitted to Department of General Services (DGS) for approval. After Notice to the State Project Manager and pursuant to the State Project Manager's direction, such prices shall be increased by the amount of any after-imposed Federal, State, and local taxes and decreased by the amount of any after-relieved Federal, State, or local taxes, except social security or other employment taxes, as applicable.

5.9 Contractor Expenses

The consideration to be paid to the Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including without limitation travel and per diem, unless otherwise expressly agreed to in writing by the State Project Manager prior to the expenditure of such funds.

5.10 Most Favored Customer

Should the Contractor, following the Execution Date, agree to provide substantially the same or similar Services to any other customer for a fee or price (hereafter "prices") more favorable than the prices specified in this Contract, the State shall be permitted the benefit of such prices as of the date such prices became available in such other agreement; provided, that the State makes written request for such prices; and provided further, that the State agrees in such request to accept any applicable less favorable terms.

5.11 Overpayments to Contractor

The Contractor shall promptly refund to the State the full amount of any erroneous payments, incorrect payments or overpayments upon determination by Contractor or upon receipt of Notice from the State Project Manager.

5.12 Credits and Right to Set Off

Amounts due the State by Contractor, including but not limited to liquidated or other damages, or claims for damages, may be deducted, credited or set-off by the State from any money payable to Contractor pursuant to this Contract. Any such amounts due the State under this Contract may be applied against Contractor's invoices with appropriate information attached, upon giving of 30 days prior Notice by the State Project Manager to Contractor.

5.13 Advance Payments Prohibited

No payments in advance of or in anticipation of Services, Deliverables, Software or Equipment to be supplied under this Contract shall be provided by the State.

5.14 Payments to Subcontractors

Money paid to Contractor by the State shall be dispersed to Contractor's Subcontractors after receipt of the money in accordance with the terms of the subcontract. Upon final payment to Contractor, full payment to the Subcontractors shall be made, provided there are no bona fide disputes over the Subcontractor's performance under such subcontract.

5.15 Supplemental Contracts

The State may have, undertake or award supplemental contracts for work related to this Contract or any portion thereof. Contractor shall cooperate with the other contractors and the State in all such cases. To the extent that such cooperation requires additional work on the part of Contractor the parties will authorize such work in a Work Authorization.

5.16 Union Activities

The Contractor acknowledges by signing this agreement the applicability of Government Code Section 16645 through 16649 to this agreement and agrees to the following:

1. Contractor will not assist, promote or deter union organizing by employees performing work on a State service contract, including a public works contract.
2. No State funds received under this agreement will be used to assist, promote, or deter union organizing.
3. Contractor will not, for any business conducted under this agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
4. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

5.17 Reduction in Price

If there is a reduction in the work or Services provided to the State by Contractor there shall be a corresponding reduction in the price the State pays to Contractor for such work or Services.

6 EQUIPMENT

6.1 Main System Components

6.1.1 Placement of CMIPS II Main System Processing Platform Components

If the services and equipment provided by the Contractor involve mainframe, midrange, mini-computer, or server-based technical solution(s), any hardware equipment specified for the main processing for the CMIPS II System (production and operation equipment) shall be installed and shall operate at the State Data Center, or unless otherwise agreed to by the State Project Manager.

6.1.2 Purchase of Equipment

The Contractor, with support from the State Data Center, shall purchase the CMIPS II equipment and software defined in Exhibit 1, Statement of Work, Table 15 - Equipment Responsibility Summary as being purchased by the Contractor and as specified in the Architecture Design Specification and Capacity Management Plan.

The Contractor shall coordinate with the County Welfare Departments to ensure they have the specifications needed for the County to purchase, install, and maintain the local area networks and desktop equipment and software that meet the specifications in the Architecture Design Specification and Capacity Management Plan.

The Contractor shall purchase, install, certify and maintain equipment and software for the forms architecture at the County sites. This shall include replacement of the seventy (70) printers currently installed and installation of an additional thirteen (13) printers at Counties that currently have no CMIPS print capabilities. The locations and number of printers can be found in the Bidder's Library, Artifact 13 - Incumbent Vendor Location and Number of Printers.

The Contractor shall purchase, install, and maintain any office equipment and software to be used by the Contractor such as workstations, printers, email server, and copiers, etc.

6.1.3 Title to Equipment

The Contractor shall transfer ownership of the hardware and software required for production and M&O activities, including timesheet processing, to the State. Title to all hardware and software, to the extent that title to the software is transferable, shall pass to the State upon payment for such Equipment. If the title to the software is not transferable, the State shall be provided a complete and full license in the State's name for the use of all software used for the Production Processing Platform. Contractor shall provide all such third party software licenses to the State for pre-approval before securing any such licenses. The State shall assign to Contractor the rights necessary under each license agreement for purposes of Contractor's performance of this Contract.

6.1.4 Option to Purchase from Third Party

The State shall have the option to purchase any equipment identified in Contractor's proposal for production and M&O, including times sheet processing, from a third party independent vendor, and not from the Contractor, to be decided at the time of purchase.

6.1.5 Installation

If required by Contractor's hardware configuration, and as agreed to by the State, the State Data Center will modify its existing Site to accommodate the placement of the portions of the CMIPS II System to be housed at the State Data Center. Contractor-proposed Modifications shall be limited to those required for the environment of the hardware and shall not include any change to other State Data Center operations or infrastructure such as, without limitation, system interfaces, or networking. Contractor shall install the CMIPS II System housed at the State Data Center in conformity with the hardware manufacturers and Contractor's specifications and the State Data Center specifications and requirements, if any. Contractor personnel certified by the hardware manufacturer in installation of the manufacturer's hardware shall install, test, and

certify that the CMIPS II equipment has been successfully installed to the manufacturer's specifications.

6.1.6 Certification of Readiness

Upon completion of the CMIPS II System Installation at the State Data Center, Contractor shall certify in writing to the State Project Manager that all required State Data Center Site modifications have been satisfactorily completed, that the hardware has been Installed pursuant to and in conformity with all requirements, and the hardware Installation is complete and ready to operate pursuant to manufacturer's and Contractor's specifications.

After certification by the Contractor, any alterations or modifications to the State Data Center Site that are directly attributable to incomplete or erroneous specifications provided by Contractor and which involve additional expense shall be made at the expense of Contractor, to the extent that such costs would not have been incurred had complete or correct specifications been provided for the initial Installation.

6.1.7 CDSS-Adult Programs Branch (APB) and County Forms Architecture - Installation and Certification

Installation by Contractor of any hardware and software at State Offices, and as applicable County offices and other Sites for County forms architecture shall be performed by appropriately certified and licensed Contractor or Subcontractor personnel and in conformity with the hardware manufacturer's and Contractor's specifications and State, County and other Sites requirements. Upon completion of any Installation, Contractor shall certify in writing to the State Project Manager, for each State, County and other applicable Site location, that all required Site modifications have been satisfactorily completed, that the hardware has been Installed pursuant to and in conformity with all requirements, and that the Equipment Installation is complete and ready to operate pursuant to Contractor's specifications. Installation at State Offices is subject to Acceptance by the State. Any installation at County office sites and other applicable sites is subject to Acceptance by the respective County or organization.

Any subsequent alterations or modifications to any State Office, County Office or other applicable Site which are directly attributable to incomplete or erroneous Specifications provided by the manufacturer or the Contractor and that involve additional expense shall be made at the expense of Contractor, to the extent that such costs would not have been incurred had complete or correct Specifications been initially provided by Contractor.

6.1.8 Option to Purchase CDSS-APB Equipment

The State shall have the option to purchase from Contractor, and the Contractor agrees to sell to the State, all CDSS-APB Equipment (workstations, printers, servers, hardware and software, LAN) at the price contained in Contractor's proposal, or from an independent third party vendor, to be decided by the State Project Manager at the time of purchase. Title to all CDSS-APB Equipment, to the extent title to the software is transferable, shall pass to the State upon exercise of the option and payment for such Equipment. If the title to the software is not transferable, the State shall be provided a complete and full license in the State's name for all software used for CDSS-APB Equipment. Contractor shall provide all such third party software licenses to the State for pre-approval before securing any such licenses. The State shall assign to Contractor the

rights necessary under each license agreement for purposes of Contractor's performance of this Contract.

6.2 Maintenance

Contractor shall keep in effect and current for the term of the Contract all hardware maintenance agreements, warranty service and support contracts and licensing agreements for all equipment defined in Exhibit 1 – Statement of Work, Table 15 – Equipment Responsibility Summary, as being maintained by the Contractor.

The Contractor shall maintain and manage for the term of the Contract, in coordination with the State Data Center, system software including, but not limited to, Commercial Off-the-Shelf (COTS) and developed software as part of the base level of service.

The Contractor shall maintain for the term of the Contract, unless otherwise approved by the State Project Manager, all tools and all related data used for CMIPS II development and documentation.

The Contractor shall maintain for the term of the Contract, unless otherwise approved by the State Project Manager, all tools and related data used for managing and maintaining Supporting Processes related to the Contract. Tools and related data for Supporting Processes include, but are not limited to, those used to create documentation, project plans, and reports.

Contractor shall perform directly or coordinate and ensure performance of all maintenance tasks and activities referenced in this subparagraph 6.2, including, but not limited to, identifying software warranty and maintenance periods and renewals, and maintaining all licensing agreements, warranty service and support contracts for the term of this Contract.

6.3 Delivery

Contractor shall strictly adhere to the Delivery Date and Installation Schedules for Equipment specified in the Master Work Plan. Delivery may be restricted by the State to non-peak commute hours at specific State, County, and Public Authority Sites. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. If Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may require Contractor to remove the excess goods at Contractor's expense or utilize any other rights available to the State in law or in equity.

6.4 Packing and Shipment

1. All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - a. Show the number of the container and the total number of containers in the shipment; and
 - b. The number of the container in which the packing sheet has been enclosed.
2. All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

3. Shipments must be made as specified in this Contract.

6.4.1 Transportation Costs and Other Fees or Expenses

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract. Contractor must provide all items Free on Board (F.O.B.) Destination.

6.5 Substitutions

Substitution of goods may not be tendered without advance written consent of the State. All substitution of goods shall meet or exceed the specifications contained in this Contract. Contractor shall not use any specification in lieu of those contained in this Contract without the written consent of the State.

6.6 Access

Contractor shall have access to the Equipment to provide Services described in this Contract, subject to the security regulations existing at the Site(s) where the Equipment is located.

6.7 Protection From Damage

Contractor shall be responsible for damage, destruction, or loss to the Equipment and the State's and Counties and other sites real and personal Property caused by the acts or omissions of Contractor's employees, agents, and Subcontractors in connection with the delivery, Installation, and maintenance of the Equipment and software. Contractor shall repair or replace any such damage, destruction, or loss.

6.8 Codes

Contractor shall comply with all applicable Federal, State, County, and local codes, inspection standards, and ordinances related to installing the Equipment which are in effect on the date of Installation. In the event that any Installation Services performed by Contractor are subsequently found to be in violation of codes in effect on the date of Installation, Contractor shall bring the Installation Services into compliance at no additional cost.

6.9 State Obligation to Procure

The State is not obligated to procure any specific quantity of Equipment.

6.10 Supplies

The State Data Center shall provide all Supplies necessary for the operation of the portions of the CMIPS II System that are at the State Data Center. All Supplies utilized shall be appropriate for the equipment and conform to the equipment manufacturer's or Contractor's published Specifications, as applicable, which are, by this reference, made a part of this Contract as though fully set forth herein. If there are no published Specifications for such Supplies, any Supplies may be utilized that are advertised as appropriate for the Equipment.

The State shall provide all Supplies necessary for the operation of the CDSS-APB Equipment. Counties and Public Authorities shall provide Supplies for Forms Architecture Equipment at their respective locations. Contractor shall provide all other Supplies.

Supplies for CDSS-APB Equipment and for Forms Architecture Equipment shall be appropriate for the equipment and conform to the equipment manufacturer's or Contractor's published Specifications, as applicable, which are, by this reference, made a part of this Contract as though fully set forth herein. If there are no published Specifications for such Supplies, the State, County offices and Public Authorities shall be free to utilize any Supplies that are advertised as appropriate for the Equipment.

6.11 Capacity Management Plan

The Contractor shall provide a Capacity Management Plan as required by Exhibit 1, SOW Paragraph 4.4.3, Capacity Planning and Management. Contractor shall be solely responsible for ensuring sufficient State Data Center services and HHSDC Network Services capacity at Project Initiation for current and projected System usage over the term of the Contract (including any extensions) and shall pay all costs associated with all State Data Center services and HHSDC Network Services requirements that exceed the capacity specified in Contractor's initial Capacity Management Plan.

7 WARRANTIES

7.1 System and Services

1. Unless otherwise specified, the warranties contained in this Contract begin after Acceptance has occurred.
2. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this Contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all Defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from Defects in design. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
3. Contractor warrants that the whole System shall function, operate and perform in all facilities in full and complete conformity with the requirements of this Contract and Accepted designs, descriptions, and Specifications.
4. Contractor shall immediately and at Contractor's sole expense correct any Defect or Deficiency, or re-perform any work not in compliance with this warranty.
5. All warranties, including special warranties specified herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
6. Contractor further warrants that:
 - a. Contractor shall fully and completely perform the Services as described in this Contract and in accordance with the Master Project Plan and applicable Specifications. Such Services shall include, but not be limited to,
 - i) Designing and developing the Deliverables in compliance with the Specifications;

- ii) Designing, developing, testing, and implementing CMIPS II in accordance with the Specifications;
 - iii) Providing CMIPS II Application Software Modifications and Enhancements; and
 - iv) Assuming sole responsibility (except for State Data Center, Counties, and Project Office responsibility for performance of their obligations) for the timely accomplishment of all other Tasks specified in this Contract.
- b. Time is of the essence in this Contract.
- c. Contractor shall give highest priority to the performance of the Services and correcting any Defects or operational problems; and
- d. Contractor shall perform all Services required pursuant to this Contract in a professional manner, with high quality, using best industry practices, including but not limited to, IEEE, ANSI, IEC, ISO or Project Management Institute standards, and in accordance with the standards of the manufacturers of applicable Systems' components.
7. In addition to any other warranties, Contractor shall, at no cost to the State, re-perform any work not in compliance with this warranty that is brought to its attention within a reasonable period of time after the date mutually agreed to by the parties for the start of the Production System for the first set of users and in no event more than 90 days after Final Acceptance of the System.
8. Contractor shall be responsible for, and warrant, any third party Equipment and Software identified in Contractor's proposal or used by Contractor in operating or providing Services in support of CMIPS II. With respect to any such third party equipment and software, Contractor's responsibility is to implement all reasonable efforts to repair or provide a work around or suitable replacement product such that any service or deliverable provided by Contractor meets Contractor's warranty as specified above.
Contractor will have no responsibility, warranty or other obligations with respect to work improperly performed by State or County personnel, unless such work was approved by Contractor, or failure of a Deliverable due to misuse or misapplication by the State or County.
9. All warranties provided by the manufacturer or seller of any third party Equipment and Software provided by Contractor, identified in Contractor's Proposal or used by Contractor in support of CMIPS II shall include the State as a named beneficiary or otherwise made available so the warranty may be directly exercised by the State.
10. Contractor will have no responsibility, warranty or other obligations with respect to work improperly performed by State or County personnel, unless such work was approved by Contractor, or failure of a Deliverable due to misuse or misapplication by the State or County.

7.2 Price

Contractor shall assume sole responsibility for the accuracy and sufficiency of Contractor prices listed in Exhibit 4 – Rates and Pricing. Contractor warrants that all Contractor prices listed in Exhibit 4 – Rates and Pricing are fixed and shall not be increased for the term of this Contract. Contractor shall be solely responsible for any additional costs related to the full and complete performance of this Contract.

7.3 Equipment

Contractor warrants that:

1. The State's use and possession of the Equipment provided by Contractor will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Contractor.
2. The Equipment provided by Contractor will be free of any claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.
3. The Equipment will be new and unused.
4. Each item of Equipment, component, or feature delivered hereunder will conform to the detailed Specifications of such Equipment, component or feature. Contractor acknowledges that the State is relying on Contractor's expertise in the choice of Equipment and its configuration.
5. Contractor's Equipment configuration will conform to the detailed Specification of such. Any such configuration shall be deemed not Accepted if not installed in accordance with its Specifications.

7.4 Four-Digit Date Compliance

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

7.5 No Viruses or Disruptive Software

Contractor represents and warrants that the Software provided by Contractor, including any Third Party Software, under this Contract shall contain no viruses, backdoors, bombs, or other software mechanisms, techniques or devices designed to, intercept and retransmit Data, provide unauthorized use of system resources, disrupt, disable or stop its processing of Data. Any Third Party Software warranties against viruses or disruptive software provided by the manufacturer or seller of such Software shall include the State as a direct beneficiary.

7.6 Covenant Against Gratuities

Contractor warrants, by signing this Contract, that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of the Contractor, to any officer, agent, representative, or employee of the State with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State

provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

7.7 Good Standing

Contractor warrants that it is currently in good standing with the State Office of the Secretary of State and qualified to do business in California.

7.8 Power and Authority

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

8 ADDITIONAL RIGHTS AND REMEDIES

8.1 Liquidated Damages – General

8.1.1 Acknowledgement of Harm

The parties agree that any delay or failure by Contractor to timely perform its obligations by the dates in the Master Work Plan and in accordance with the Acceptance Criteria, Specifications, Performance Standards and other requirements in this Contract will interfere with the proper and timely implementation of the System and Services, to the loss and damage of the State. Further, State will incur costs to maintain the functions that would have otherwise been performed by Contractor. The liquidated damages that shall be assessed by the State as a result of Contractor's delay or failure to perform its obligations in accordance with the terms of this Contract are as described in Paragraphs 8.1, Liquidated Damages – General and 8.2, Liquidated Damages – Specific Amounts. Liquidated damages will not be assessed if, as determined by the State, Contractor's delay or failure to perform its obligations was caused by factors beyond the control and without any material error or negligence of Contractor including Contractor's Staff, or Subcontractors.

8.1.2 Payment of Liquidated Damages

For the amount of any such damages, the State shall have the right to reduce the amount of payment due hereunder to Contractor as a credit or offset for the State or require direct payment therefore from Contractor to the State. The parties agree that the damages herein provided are difficult to establish and Contractor shall be assessed the amounts in Contract Paragraph 8.2, Liquidated Damages – Specific Amounts, as liquidated damages and not as a penalty.

8.1.3 Other Remedies

The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract. Notwithstanding any other term of this Contract, the State may elect, in its discretion, to recover actual damages or

seek other remedies caused by Contractor's failure to perform its obligations under this Contract in lieu of assessing liquidated damages. Such actual damages will include, without limitation, staff time and travel costs.

8.2 Liquidated Damages – Specific Amounts

8.2.1 Corrective Action Plans

Contractor shall provide and execute Corrective Action Plans pursuant to Exhibit 1, Statement of Work, Paragraph 3.2.9, Corrective Action Plan, and as directed by the State. If the Contractor fails to prepare a CAP acceptable to the State by the agreed upon due date, Contractor shall be assessed liquidated damages of \$1,200 for each day that an acceptable CAP remains undelivered.

For each delivered CAP, if the CAP is not successfully executed or its execution does not correct the identified Defect to be remedied by the CAP, or correct the Defect within the time specified in the CAP, the Contractor shall be assessed liquidated damages of \$2,800 for each day, or portion thereof, where the CAP Defect remains uncorrected.

8.2.2 Deliverables

If Contractor does not deliver a Deliverable and receive Acceptance for that Deliverable in conformance with the Acceptance process set forth in the Exhibit 1, Statement of Work Paragraph 3.2.3, Deliverable Standards and Acceptance Process, and by the due dates and dates for Acceptance specified in the Deliverable Expectation Document, or as provided below, the State may assess liquidated damages at the rate of \$300 per Deliverable for each day that the Deliverable is late and does not meet the Acceptance Criteria. The date for delivery of a Deliverable that meets all Acceptance criteria may be extended as agreed to in writing by the State.

8.2.2.1 Deliverable Expectation Document

Contractor shall prepare and receive Acceptance for a Deliverable Expectation Document for every Deliverable provided under this Contract in conformance with the Deliverable Expectation Document Acceptance process set forth in Exhibit 1, Statement of Work, Paragraph 3.2.3, Deliverable Standards and Acceptance Process, by the due dates and dates for Acceptance specified therein. If Contractor does not deliver a Deliverable Expectation Document that is Accepted by the State within the time required for each Deliverable Expectation Document, Contractor shall be assessed \$300 per day as liquidated damages for each day that the Deliverable Expectation Document is late and does not meet the Acceptance Criteria.

8.2.2.2 Master Work Plan

Contractor shall provide a Master Work Plan Acceptable to the State as required by Exhibit 1, Statement of Work, Paragraph 3.1.2, Master Work Plan, in a timely manner. If the State Project Manager determines that Contractor has not provided a Master Work Plan Acceptable to the State within the time required, Contractor shall be assessed \$1,200 as liquidated damages per day until an Acceptable Master Work Plan is provided.

8.2.2.3 System Development Plan

Contractor shall provide a System Development Plan Acceptable to the State as required by Exhibit 1, Statement of Work, Paragraph 4.1.1, System Development Planning, in a timely manner. If the State Project Manager determines that Contractor has not provided an Acceptable System Development Plan to the State within the time required, Contractor shall be assessed \$1,200 as liquidated damages per day until an Acceptable System Development Plan is provided.

8.2.2.4 Project Maintenance Plan

Contractor shall provide a Project Maintenance Plan Acceptable to the State as required by Exhibit 1, Statement of Work, Paragraph 4.3.2, Project Maintenance Planning, in a timely manner. If the State Project Manager determines that Contractor has not provided an Acceptable Maintenance and Operations Plan to the State within the time required, Contractor shall be assessed \$1,200 as liquidated damages per day until an Acceptable Maintenance and Operations Plan is provided.

8.2.2.5 Operations Plan

Contractor shall provide an Operations Plan Acceptable to the State as required by Exhibit 1, Statement of Work, Paragraph 4.4.1, System Operation Planning, in a timely manner. If the State Project Manager determines that Contractor has not provided an Acceptable Systems Operations Plan to the State within the time required, Contractor shall be assessed \$1,200 as liquidated damages per day until an Acceptable System Operations Plan is provided.

8.2.2.6 System Requirements Evaluation Report

Contractor shall provide a SyRS Evaluation Report Acceptable to the State as required by Exhibit 1, Statement of Work, Paragraph 4.1.2, System Requirements Validation, in a timely manner. If the State Project Manager determines that Contractor has not provided an Acceptable System Requirements Evaluation Report to the State within the time required, Contractor shall be assessed \$1,200 as liquidated damages per day until an Acceptable System Requirements Evaluation Report is provided.

8.2.2.7 Documentation

Contractor shall provide, in a timely manner, all System Documentation as required by Exhibit 1, Statement of Work to include:

1. General System Design defined in the SOW Paragraph 4.1.4, General System Design (GSD)
2. Architecture Design Specification defined in SOW Paragraph 4.1.5, Architecture Design Specification (ADS)
3. Detailed System Design defined in the SOW Paragraph 4.1.6, Detailed System Design (DSD)
4. User Documentation defined in the SOW Paragraph 4.1.7, Coding and Documentation, item 3.
5. System Test Plan and Test Materials Packet defined in SOW Paragraph 4.2.1, Test Planning and Deliverables

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

without limitation IRS, FTB, Board of Equalization and EDD Guides), court rules and orders. In addition, timely manner shall mean that payroll services are completed in the time provided in Table 1. If Contractor does not perform Payroll Services as required in a timely manner Contractor shall be assessed \$100 per day per instance (single warrant or single provider data record) as liquidated damages.

Table 1. Payroll Services

PAYROLL ACTIVITY	MUST BE COMPLETED
Include all timesheet entered data into payroll records	Within one business day of entry
Processes Payroll - Prepare and send SCO a payroll warrant tape claim file information and EFT pre-note cases	A minimum of once a day – Monday through Friday
Deliver claims schedule and files to SCO	Before 10:30 a.m. Daily – Monday through Friday
Update system with warrant records from SCO	A minimum of once a business day
Deliver EFT schedule and files to SCO, and update EFT records in system from SCO	A minimum of once a month
Update system with re-deposited and cleared warrant and EFT information from STO	Once a business day
Update W-4 and DE 4 forms and records	By the end of the next pay period after receipt at Contractor's site
Return incorrectly or incompletely filled out W-4 and DE 4 forms to individual providers	Within 10 days from receipt at Contractor's site
Update W-5 information in system	Prior to the end of the payroll period the W-5 is received in
Return incorrectly or incompletely filled out W-5 forms to the County.	Within 10 days from receipt at Contractor's site
Fully process liens	Within 10 days of receipt at Contractor's site

8.2.6.2 CMIPS II System Online Availability

Contractor shall maintain CMIPS II System Online Availability of 99.9 percent measured on a calendar month basis and 99.9 percent measured on a calendar year basis. This Online Availability is based on 100 percent of PCSP/IPW/IHSS Residual offices connected directly via the HHSDC Wide Area Network (WAN) having full functionality online processing access to the CMIPS II system 5 days a week (Monday through Friday) from 6:00 a.m. to 7:00 p.m. throughout the Operational Calendar Year. If Contractor does not meet this Performance Standard in any one calendar month, the State shall assess liquidated damages of \$3000 an hour, or portion thereof, for every hour in the calendar month or calendar year that the System Online Availability requirements are not met.

8.2.6.3 CMIPS II System Response Times

Contractor shall maintain System Response Times as provided in Table 2, below. System response time is defined as the elapsed time, starting when the user request is identified in the System, and ending when the request has been processed and sent back from the System. System Response Times will be measured hourly.

Table 2. System Response Times

RESPONSE TIMES AND STANDARD	TASK TYPES
One second or less 95% of the time per task	For processing that does not interact with the database
One second or less 90% of the time per task	For processing that interacts with the database
No response time shall exceed 15 seconds per task	For any other purpose, except as pre-authorized by the State Project Manager

If Contractor does not meet the above System Response Times Performance Standards, the Contractor shall be assessed liquidated damages of \$3,000 per hour, or portion thereof, that System Response Times are not met. Elapsed time spent in components that are not the responsibility of the Contractor shall be excluded from the response time measurement.

8.2.6.4 CMIPS II User Response Times

Contractor shall maintain User Response Times as provided in Table 3, below. User response time is defined as the elapsed time, starting when the user initiates a processing step from the client, e.g., mouse click or keyboard entry, and ending when all data has been passed back to the client, processed, displayed and the client is again available for user interaction.

Table 3. Users Response Times

RESPONSE TIMES AND STANDARD	TASK TYPE
Two seconds or less 90% of the time per task	For processing that does not interact with the database
Three seconds or less 90% of the time per task	For processing that reads the database
No response time shall exceed 15 seconds per task	For any other purpose, except as pre-authorized by the State Project Manager

If Contractor does not meet the above User Response Times Performance Standards, the Contractor shall be assessed liquidated damages of \$3,000 per hour or portion thereof that User Response Times are not met. Elapsed time spent in components that are not the responsibility of the Contractor shall be excluded from the response time measurement.

8.2.7 Staff

To acknowledge the importance the State places upon receiving exactly the same highly qualified and experienced individuals at Contract Execution and for one year thereafter as the individuals identified as Key Staff in Contractor's proposal, without limiting any other remedies available to the State, if the Contractor does not provide all of the individuals identified as Key Staff in the Contractor's winning proposal, the Contractor shall pay to the State liquidated damages in the amount of \$10,000.

Contractor shall provide Staff pursuant to Key Staffing Requirements specified in Exhibit 1, Statement of Work, Paragraph 3.2.2.3, Key Staff. In the event Contractor does not provide required Staff or provide State access to required Staff, the State Project Manager shall assess liquidated damages at the rate of \$2,500 per day for each required Staff member not so provided.

8.2.8 Turnover Services

Contractor shall prepare and deliver to the State a Project Closeout Plan Acceptable to the State as required in Exhibit 1, Statement of Work, Paragraph 3.4, Project Closeout. If the State Project Manager determines that Contractor has not provided an Acceptable Project Closeout Plan to the State within the timeframes required, the State Project Manager shall impose liquidated damages of \$10,000 per day until an Acceptable Project Closeout Plan is provided.

Contractor shall implement the Project Closeout Plan and perform all tasks in a timely manner, including but not limited to, the transfer of all materials, documentation, licenses, tools, and related data so that there is no disruption or discontinuity in CMIPS II service from Contractor to the State or State's designee. The State shall assess liquidated damages in the amount of \$10,000 per day for any failure of Contractor to comply with any Project Closeout Plan requirements. Any duties and obligations of the Contractor under the Contract necessary to complete closeout that have not been performed at time of Contract termination shall holdover and continue in effect beyond any expiration or termination of the Contract term. It shall be a pre-condition to Contractor receiving any final payments under the Contract, including any withholds, that Contractor shall have completed all work and provided all materials for the complete migration of CMIPS II to the State or State's designee.

8.2.9 Payment Withhold – Design, Development, and Implementation Phase (DDI)

The State shall withhold the full amount of the fixed price for the DDI sub-phases identified in Paragraph 5.3, Invoicing Events of this Contract for services performed during the DDI phase of this Contract if the sub-phase milestone is not successfully completed and Accepted by the State, resulting in the State's determination that the sub-phase does not meet the milestone review's requirements for that sub-phase as defined in SOW Paragraph 5.3.4.3, Milestone Reviews.

8.2.10 Release of Payment Withholds

For each month that a payment or a portion thereof is withheld, the State shall continue to withhold said amount until Acceptance of the Deliverable or Service for which the payment withhold is associated.

8.2.11 Conditions for Termination of Liquidated Damages

Except as waived by the State Project Manager, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the State Project Manager certifying the correction of conditions for which liquidated damages were imposed, and until all Contractor corrections have been subject to adequate system testing or other verification at the approval of the State Project Manager. Liquidated damages will cease on the day of the Contractor's certification only if subsequent testing of the correction establishes that the correction has been made in the manner and at the time certified by the Contractor and the correction has been Accepted by the State. The State shall determine, within her/his sole discretion, whether the documentation provided is accurate and sufficient to verify corrections.

8.3 Deductions for Errors in Processing Payments

Contractor shall be liable to the State for any Errors caused by or arising from the acts or omissions of Contractor, its officers, employees, agents or Subcontractors, in processing Provider Payroll, Beneficiary Payments, Tax Withholding or reimbursements, including but not limited to any overpayments, duplicate payments, or the State's costs and attorney's fees incurred in collecting such payments, except to the extent such Errors arise from the actions of the State, Counties, or Federal agencies. Such liabilities may, at the State's option, be deducted from amounts payable to Contractor. This liability of Contractor shall be in addition to any other liability for processing Errors established by this Contract or by operation of law.

8.4 Deductions for Unauthorized System Access

Contractor shall be liable to the State for any damages or losses caused by or arising from the acts or omissions of Contractor, its officers, agents, or Subcontractors resulting in the failure of Contractor to prohibit unauthorized individuals from gaining access to the CMIPS II system or data as required by this Contract, including but not limited to, costs to the State of providing the notice required pursuant to California Civil Code section 1798.29. Such liabilities may, at the State's option, be deducted from amounts payable to Contractor. This liability of Contractor shall be in addition to any other liability for unauthorized system access established by this Contract or by operation of law.

8.5 Reductions in Payments Due

Notwithstanding any other provisions of this Contract, amounts due the State by Contractor as liquidated damages, disputed or not, may be credited, deducted or off-set by the State from any money payable to Contractor pursuant to this Contract.

8.6 Cover

If, in the reasonable judgment of the State, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, and the default is capable of being cured by the State or by another resource without unduly interfering with continued performance by Contractor, the State may provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the State for the reasonable cost of the Services and of procuring the Services.

8.7 Right to Inspection

The Deliverables and Services being provided by Contractor and its Subcontractors, if any, pursuant to this Contract, shall be available for inspection and review at any reasonable time by representatives of the State or Federal government including, but not limited to, the State's Independent Verification and Validation vendor.

8.8 Stop Work

8.8.1 Issuance of Stop Work Order

The State may, at any time, by written stop work order to Contractor, require Contractor to stop all or any part of the work called for by this Contract for a period of up to 90 days after the stop

The California State Department of General Services shall be identified as the beneficiary. The bond shall be on a form from a surety insurer admitted to do business in California and must unconditionally guarantee the Contractor's complete performance of all terms of this Contract. The performance bond, including the terms and conditions for collecting on the bond, shall have been reviewed and pre-approved by the State.

The State shall have the option to require Contractor to continue to guarantee full performance of the Terms and Conditions and provisions of the Contract during the Maintenance and Operation phase (M&O) of the Contract by either the continued use of a performance bond or by providing the State an Irrevocable Letter of Credit. Whichever security mechanism is chosen shall be provided at no additional cost to the State and is subject to the same terms and conditions and State agreement and approval process required in this paragraph 8.9. The Letter of Credit shall be from a bank doing business in California and insured by the Federal Deposit Insurance Corporation. The Letter of Credit or the performance bond during the M&O phase of the Contract shall be for 50% of the total value of M&O including Work Authorizations, and will remain in effect for the remainder of the Contract. See Exhibit 4, Rates and Pricing, Total Proposal Cost Summary for determining the value of the bond or letter of credit for M&O.

If the State decides to exercise the optional extension years, then the Contractor shall renew the Performance Bond or Letter of Credit in effect at the time the State's option is exercised, if any, for the extension period.

9 WORK AUTHORIZATIONS

9.1 General

The State Project Manager may, at any time, by written Work Authorization, approve changes within the scope of this Contract if the State Project Manager determines that such changes are necessary to the successful accomplishment of the general scope of work of this Contract, or in the event work required by this Contract is no longer required or other changes in this Contract must be made. In such event, the procedures contained in this Contract Paragraph shall apply.

Potential Contract changes shall be identified and resolved through the Issue Management process, as defined in Exhibit 1, Statement of Work, Paragraph 3.2.4, Issue Management, prior to issuing a Work Authorization.

Contractor shall not make any changes, provide services or perform any work not required herein or affecting CMIPS II in any manner except through a Work Authorization with the State. Contractor shall not enter into any Work Authorizations or contracts with third parties that affect CMIPS II in any manner.

9.2 Service Requests to Work Authorization

For approved changes, the Contractor shall conduct additional analysis and document the results in a Service Request as defined in Exhibit 1, Statement of Work, Paragraph 3.2.5, Change Management. If the Service Request is approved by the State Project Manager in writing, the Service Request shall be incorporated into and become part of the Work Authorization.

Contractor shall base prices for Service Requests on a reasonable number of Staff hours multiplied by the Per Hour Charge for such Staff from Exhibit 4, Rates and Pricing, plus any other reasonable costs to be incurred to effect the change at a fair and reasonable price. When there is a cost impact, i.e., increase or decrease in amounts to be paid under this Contract, Contractor shall advise the State in writing of: the increase, including a breakdown of the number of Staff hours by level of personnel to be needed to effect this change; or the decrease. Contractor will submit a System Service Request with a work cost estimate for approval by the State. Contractor will be paid for work under a Service Request based upon actual time and materials utilized to perform the authorized work but no more than the original work cost estimate. Contractor shall not charge the State for preparing any analysis or other documents necessary to evaluate and implement a Service Request/Work Authorization.

9.3 Work Authorizations Inclusion in Contract

All Work Authorizations must be in writing and signed by the State Project Manager prior to beginning work. Upon Acceptance by the State Project Manager of the Deliverable(s) which is the subject of the Work Authorization, each such Work Authorization shall be incorporated into and become a part of this Contract and the terms and conditions of this Contract shall apply to all such Work Authorizations. In no event shall a Work Authorization be deemed to be a separate contract.

9.4 Work Authorization Stop Work

The State has the right to require Contractor to stop or suspend work on a Work Authorization by prior written Notice in accordance with Paragraph 8.8, Stop Work of this Contract.

9.5 Disagreement, Claims and Termination

9.5.1 Disagreement

If the parties are unable to reach agreement within ten days of Contractor's response to a Work Authorization issued by the State, the State Project Manager may make a determination of the fair and reasonable price and Schedule and shall provide Contractor with a written explanation in the event of such determination. Following receipt of such written explanation, Contractor shall immediately proceed with the work according to such price and Schedule, subject to the Contractor's right to dispute the State Project Manager's determination of the price or Schedule. Nothing in this Paragraph shall in any manner excuse Contractor from proceeding diligently with this Contract as modified by a Work Authorization.

9.5.2 Claims

Within 30 days after receipt of a Work Authorization, unless the period is extended by the State Project Manager in writing, Contractor shall file Notice of its intent to assert a claim for an equitable adjustment through the dispute process contained in Paragraph 16.12, Dispute Resolution of this Contract as a result of such Work Authorizations. No claim by Contractor for such an adjustment hereunder shall be allowed if Notice is not given prior to final payment under this Contract.

9.5.3 Termination and Cover

If Contractor fails or refuses to perform a Work Authorization issued by the State, Contractor shall be in material breach of this Contract, and the State shall have the right to immediately terminate this Contract for Default as provided in Paragraph 15.2.2, Default of this Contract.

If, in the reasonable judgment of the State, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, and the default is capable of being cured by the State or by another resource without unduly interfering with continued performance by Contractor, the State may provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the State for the reasonable cost of the Services and of procuring the Services.

10 INSURANCE

10.1 Liability and Auto Insurance

Contractor shall obtain, before the commencement of its Services herein described, and, during the term of this Contract, maintain, in full force and effect, the insurance coverage described in this Paragraph with an insurance carrier or carriers approved to do business in California. Contractor shall include the State as an additional named insured party in Contractor's insurance policy obtained hereunder. The minimum acceptable limits and types of coverage shall not be less than \$1 million per occurrence and \$2 million aggregate limit per occurrence for each of the following categories:

1. General public liability covering the risks of bodily injury, property damage and personal injury (including death);
2. Automobile liability (owned and unowned) covering the risks of public liability and property damage; and
3. Professional Liability Insurance or a Fidelity bond, covering, among other matters, errors and omissions of Contractor in performing the Services.

10.2 Worker's Compensation Coverage

Prior to performing Services under this Contract, Contractor shall provide or purchase worker's compensation coverage for Contractor's employees, as may be required under applicable law during the term of this Contract. A certificate of such insurance policy carried shall be furnished to the State upon request. Should Contractor fail to secure such coverage or fail to pay premiums, as may be required under applicable law, the State may deduct the amount of premiums and any penalties owing from the amounts payable to Contractor under this Contract and transmit the same to the appropriate State agency providing Worker's Compensation coverage. This provision does not waive any right to collect from Contractor amounts paid by the State.

The State shall not be responsible for payment of worker's compensation premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the worker's compensation laws during performance of duties and services under this Contract. If the State determines at any time that worker's compensation payments are

due and owing as a result of work performed under this Contract, those payments shall be made by Contractor.

10.3 Subcontractors

Contractor shall require any and all of its Subcontractors to obtain and maintain similar policies of compensation insurance as described in this Paragraph 10, Insurance, or be properly certified under applicable State law as self-insured. A certificate of such insurance policy carried shall be furnished to the State upon request.

10.4 Premiums

Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for the State pursuant to this Paragraph 10, Insurance, shall expressly provide therein that the State be named as additional insured, and that it shall not be revoked by the insurer until 30 days notice of intended revocation thereof shall have first been given to the State by such insurer.

10.5 Certificates

Contractor shall furnish to the State copies of certificates of all required insurance within 30 days of the Execution Date.

11 STATE PROPERTY

11.1 Ownership

The State shall retain title to all Property provided by the State to the Contractor for use in the Project.

11.2 Use of Property

Any Property provided to Contractor shall, unless otherwise provided herein, or approved in writing by the State Project Manager, be used only for the performance of and subject to the terms of this Contract. Contractor's use of the Property shall be subject to the State's security, administrative and other requirements.

11.3 Damage to Persons or Property

Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's acts or omissions. Contractor shall repair or replace any Property damage, destruction, or loss at the Facility or Sites caused by Contractor's acts or omissions. Contractor shall be responsible for any personal injury at the Facility or Sites that may be caused by Contractor's acts or omissions.

11.4 Notice of Damage

Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the State Project Manager thereof and shall take reasonable steps to protect that Property from further damage.

11.5 Surrender of Property

Contractor will ensure that the Property will be returned to the State in like condition to that in which it was furnished to the Contractor, reasonable wear and tear excepted. Contractor shall surrender to the State all Property upon the earlier of it no longer being required or termination of this Contract. Contractor grants the State the right to enter upon Contractor's premises for the sole purpose of recovering any of the Property that Contractor fails to return within thirty days of termination of this Contract. Upon failure to return the Property within 45 days of this Contract expiration or termination, Contractor shall be charged with reasonable costs of recovery, including without limitation transportation and attorney's fees.

12 CONFIDENTIAL INFORMATION

12.1 Access and Nondisclosure Obligation

During the term of this Contract, Contractor and the State will have access to and become acquainted with Confidential Information of the other party. The State and Contractor, and each of their officers, employees and agents, shall maintain all Confidential Information of the other party in strict confidence and shall not at any time use, publish, reproduce or disclose any Confidential Information, except to authorized employees, contractors, or agents requiring such information, as authorized in writing by the other party, to perform its obligations as authorized hereunder, or unless otherwise required by law.

12.2 Protective Measures

Both parties shall take steps to safeguard the other party's Confidential Information against unauthorized disclosure, reproduction, publication, or use. Contractor shall have written policies governing access to, duplication, and dissemination of all such Confidential Information. Contractor shall take appropriate action, as reasonably determined by the State, with any persons permitted access to the State's Confidential Information so as to enable Contractor to hold the Confidential Information in confidence and otherwise to satisfy Contractor's obligations under this Contract. The use or disclosure by either party of any Confidential Information concerning the other party for any purpose not directly connected with the administration of the disclosing parties responsibilities with respect to Service(s) provided under this Contract is prohibited except by prior written consent of the other party, unless otherwise required by law.

12.3 Security Requirements

Contractor, its officers, employees, and Subcontractors shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of the State, provided by the State to the Contractor which the State may establish from time to time, with respect to information and materials which come into Contractor's possession and to which Contractor gains access under this Contract. Such information and materials include, without limitation, all Confidential Information.

12.4 Unauthorized Disclosure of Confidential Information

Each party will immediately report to the other party any and all unauthorized disclosures or uses of the other party's Confidential Information of which it or its Staff is aware or has knowledge.

Each party acknowledges that any publication or disclosure of the other party's Confidential Information to others may cause immediate and irreparable harm to the other party, and if either party should publish or disclose such Confidential Information to others without authorization, the other party shall immediately be entitled to injunctive relief to prevent further harm.

12.5 Public Records Request

The State will notify Contractor as soon as reasonably practicable of any and all public records requests for Contractor's Confidential Information in accordance with and subject to applicable State laws regarding disclosure of such Confidential Information. If Contractor disagrees with disclosure of Contractor's Confidential Information by the State, Contractor shall have the right to contest its disclosure in accordance with State law.

12.6 Exceptions

The following information shall not be considered Confidential Information for the purposes of this Contract: information which was already known to the receiving party, other than under an obligation of confidentiality, at the time of disclosure by the disclosing party; information which was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving party; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the public.

12.7 Written Staff Agreements

Contractor agrees to cause Staff, which Contractor makes available the State's Confidential Information as permitted by this Contract, to agree in writing to observe and perform all provisions of this Paragraph 12, Confidential Information, of this Contract applicable to such Staff. Submission by Contractor to the State Project Manager of Contractor's current internal process for ensuring the protection of Confidential Information substantially meets the requirements of this Paragraph 12.7 in form and substance.

12.8 Survival

The provisions of this entire Paragraph 12, Confidential Information, shall remain in effect following the termination or expiration of this Contract.

13 OWNERSHIP AND RIGHTS

13.1 State Ownership

Ownership of the copyright and all other intellectual Property rights and know-how in the Deliverables created, developed, produced or generated by Contractor in its performance of Services provided pursuant to this Contract including, without limitation, any Services performed prior to the execution date of this Contract, (the Intellectual Property) shall vest in and remain with the State, subject to any licenses reserved by the federal government as required pursuant to federal law. For purposes of this Contract, Intellectual property shall include any

original work of authorship, including any written, pictorial, graphic or audiovisual work or sound recording, any Software and Software programming and modifications thereof, and any Documentation created by Contractor in the course of providing Services to the State pursuant to this Contract. All Intellectual Property shall constitute a “work made for hire” as such term is defined under United States copyright law and shall be the property of the State, and the State shall own all of the rights, including the rights of copyright in the work. To the extent any of the foregoing does not qualify as a “work made for hire,” Contractor hereby irrevocably and exclusively assigns and transfers to the State, its successors, and assigns, all rights, title, and interests in and to all such Intellectual Property, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. To the extent any of Contractor’s rights in the Deliverables are not subject to assignment or transfer hereunder, including without limitation any moral rights, Contractor shall irrevocably and unconditionally waive all enforcement of such rights. The Contractor shall indemnify, defend, and hold harmless the State and its successors and assigns from and against any and all liability resulting from a defect in the Contractor’s Intellectual Property rights in the Deliverables. Contractor shall promptly execute and deliver all documents and take any and all other actions that the State may reasonably request in order to assist the State in perfecting its rights in and to the work developed pursuant to this Contract. The Deliverables, including any Software, owned by or assigned to the State pursuant to this Paragraph 13.1 shall be understood to include but not be limited to Deliverables in any medium.

13.2 Federal and Other Licenses

The State shall retain all ownership rights in any Software or Modifications thereof and associated Documentation designed, developed or installed with Federal Financial Participation. CMS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and otherwise use and to authorize others to use for Federal Government purposes such Software, Modifications, and Documentation. Proprietary operating and third-party software packages which are provided hereunder at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in Paragraph 13.1, State Ownership, and 13.2, Federal and Other Licenses, of this Contract.

13.3 Contractor Ownership

Ownership of the copyright and all other intellectual property rights or know-how in the Contractor Materials, including any software and tools used in the performance of this Contract, shall remain with Contractor and others from whom Contractor may have obtained a licensing right.

13.3.1 Encryption/CPU ID Authorization Codes

1. When Encryption/CPU Identification (ID) authorization codes are required to operate the software products, the Contractor will provide all codes to the State with delivery of the software.
2. In case of an inoperative CPU, Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.

3. When changes in designated CPUs occur, the State will notify the Contractor of such change. Upon receipt of such notice, Contractor will issue to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

13.3.2 Future Releases

If improved versions of any Contractor Materials or software product are developed by Contractor, and are made available to other licensees, they will be made available to the State at the State's option provided such versions are operable on the same computer configuration. The charge for such upgraded software versions will be the difference between the price established by Contractor for the later version and the price specified in the Statement of Work or the then prevailing price of the currently installed version.

13.4 Rights in Data

All literary works and all other works of authorship such as technical communications and records, papers, Reports, charts, computer programs and other Documentation prepared and delivered by the Contractor specifically as part of the Services under this Contract but not including Contractor's administrative communications and records relating to this Contract (hereinafter called the "Materials") shall be delivered to and shall become the exclusive Property of the State, except that exclusive Property of the State, as defined under this Paragraph, shall exclude all Contractor preexisting program products and any preexisting Contractor Materials, including derivative works thereof created under this Contract, which shall be the exclusive property of the Contractor. The State hereby grants to Contractor a nonexclusive, irrevocable, royalty-free license to use, execute, reproduce, create derivative works of, and sublicense all such State-owned Materials developed by Contractor under this Contract.

For any derivative works of Contractor Program Products or other Contractor owned Materials that are created under this Contract, Contractor hereby grants the State an irrevocable, non-exclusive, worldwide, paid-up perpetual license to use, execute, reproduce, display, perform, sublicense and/or distribute copies of such derivative work Materials.

The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.

All inventions, discoveries, or improvements by the State of the computer programs developed pursuant to this Contract or any derivative work created hereunder of a State proprietary computer program shall be the Property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor and further agrees that the Contractor may sublicense the invention, discovery, or improvements.

This Contract shall not preclude the Contractor from developing materials outside this Contract which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

13.5 Protection of Contractor Proprietary Software and Other Proprietary Data

Subject to the Public Records Act, the State agrees that all material appropriately marked or identified in writing as proprietary to the Contractor, and furnished hereunder, are provided for the State's exclusive use for the purposes of this Contract only and will be held in confidence. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor.

The State will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other Contractor proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of Contractor proprietary software and proprietary data.

13.6 LICENSES

13.6.1 License by Contractor

1. Contractor hereby grants to the State a royalty free, non-exclusive, perpetual, and irrevocable license to use Contractor Materials including, without limitation, the right to reproduce, publish, prepare derivative works based on, display, and distribute Contractor Materials to State agencies, Counties and any other third parties contemplated under this Contract. As part of the license, Contractor agrees to provide to State all Updates to Contractor Materials within thirty days of such Updates becoming available for use by Contractor.
2. The license hereunder is granted as of the Execution Date and continues until the State or its assignee or transferee discontinues the use of the Licensed Materials whereupon the State will destroy all copies of Contractor Materials in its possession.
3. Subject to the rights granted herein, Contractor shall hold all right, title and interest in the Licensed Materials.
4. The State agrees to: (i) refrain from reverse engineering, de-compiling, cross-compiling or disassembling any Software included in Contractor Materials; and (ii) reproduce and include the copyright and other proprietary notices and identifications provided by Contractor on Contractor Materials on any copies that are made of Contractor Materials, in whole or in part, and in any form or media.
5. Contractor shall provide two copies of any Documentation associated with any Contractor Materials to the State for each State and County Site that receives a copy of the Contractor's Materials.

13.6.2 License from the State

1. During the term of this Contract, the State hereby grants to Contractor a non-exclusive, non-transferable, royalty free license to Contractor to use the State Materials internally for the sole purpose of supporting Contractor's performance under this Contract. Notwithstanding

the foregoing, Contractor shall have no license to reproduce, publish, modify, prepare derivatives, distribute, or sub-license State Materials without prior written consent of the State Project Manager.

2. During the term of this Contract and subject to the limitations of this Contract, Paragraph 13.6.2, State agrees to and hereby grants to Contractor a non-exclusive, non-transferable, royalty-free license to use the State's name, trademarks, service marks, or any appropriate symbols, logos, or other designs ("Marks") that are identified with the State in the performance of Services under this Contract. Contractor shall use the Marks in a manner approved by the State Project Manager in writing prior to use.
3. Upon termination, expiration, or cancellation of this Contract for any reason, Contractor shall immediately cease using State Materials and Marks and shall, at the sole option of State, either return the State Materials to the State, or destroy the State Materials and certify to such destruction.

14 INDEMNIFICATIONS AND LIMITATION OF LIABILITY

14.1 Indemnification

Contractor shall, at its expense, indemnify, defend, and hold harmless the State, including employees, officers, contractors and agents from and against any losses, liability, damages, penalties, costs, fees, including, without limitation, reasonable attorney's fees, or expenses, including without limitation, interest expenses, from any claim or loss caused by or arising from the negligent or intentionally tortuous acts or omissions of Contractor, its officers, employees, agents, or Subcontractors, including without limitation:

1. Claims for bodily injury, death, or damage to property;
2. Losses resulting from the errors or omissions of Contractor;
3. Breaches of warranty under this Contract;
4. Financial losses or penalties resulting from Contractor errors related to payroll Services, including but not limited to late or inaccurate tax and government filings, tax and FICA withholdings, reporting, or deposits;
5. Fraud and abuse on the part of Contractor or its representatives or Subcontractors;
6. Erroneous or duplicate postings to a Beneficiary or Provider account by cause of Contractor;
7. Damages, losses or penalties resulting from Errors, including but not limited to late filings, to the New Employee Registry and pursuant to CA UIC 1088.5 and 1088.6;
8. Damages or losses suffered by a Federal or State agency due to negligence on the part of Contractor;
9. Damages or losses to the State, PCSP/IPW/IHSS RESIDUAL recipients, providers, and Counties caused by fraud or abuse on the part of Contractor or its representatives or Subcontractors;
10. Payment of applicable worker's compensation premiums or any claim for worker's compensation benefits by Contractor's agents, employees, representatives or Subcontractors
11. Damages or losses caused by or arising from Contractor's failure to protect the State's Confidential Information pursuant to this Contract;

12. Damages or losses caused by or arising from Contractor's failure to prohibit unauthorized individuals from gaining access to the CMIPS II system or data as required by this Contract including but not limited to, costs to the State of providing the Notice required pursuant to Civil Code section 1798.29;

13. Claims, taxes, premiums or assessments grounded in an allegation that Contractors' employees, agents or Subcontractors are employees of the State.

Except for liability for Federal sanctions or penalties pursuant to Paragraph 14.4, Federal Sanctions or Penalties, in no event will the Contractor be liable under this Paragraph 14 for consequential damages even if notification has been given as to the possibility of such damages.

14.2 Other Claimants

Contractor's obligations to indemnify defend, and hold harmless include any claim by Contractor's agents, employees, or representatives, or any Subcontractor or its employees.

14.3 Intellectual Property

14.3.1 State's Use of Deliverables

Contractor shall, at its expense, defend, indemnify, and hold harmless the State from, any claim or action against the State which is based on a claim that the State's use of the Deliverables or any one or part thereof under this Contract infringes a patent, copyright, or other proprietary right of a third party or misappropriates a trade secret of a third party, and Contractor shall pay all liabilities, damages and costs (including reasonable attorney's fees) caused by or arising from such claim, provided that Contractor is given Notice of such claim within a reasonable time. The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorney's fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed ; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

14.3.2 Third Party Obligation

With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for under Paragraph 14.3.1, State's Use of Deliverables, . The provisions of this paragraph shall apply only to third party computer Hardware or Software sold as a distinct unit and Accepted by the State.

14.3.3 State Remedies

In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for the State the right to continue using the Deliverables; or (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual Property rights. If neither of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor for the Deliverables taken back, and make every effort to assist the State in procuring substitute Deliverables at a cost similar to the amount paid for the original infringing product(s). If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Equipment or Software acquired from Contractor under this Contract impractical, the State shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge to the State and Contractor agrees to take back such Deliverables, including but not limited to Equipment or Software, and refund any sums the State has paid Contractor.

14.3.4 Restrictions on Use

Notwithstanding the above, Contractor shall not indemnify the State to the extent that such claims arise from the State's misuse, modification or other alteration of the Deliverables and to the extent that such use or modification or other alteration to the Deliverables caused such infringement or misappropriation claim. However, the State shall be able to use the Deliverables in any legally permissible way, consistent with its ownership rights authorized under this Contract.

In addition, Contractor shall have no liability to the State under this paragraph which is based upon: (i) the combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or (ii) the operation of Equipment furnished by the Contractor under the control of any operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or (iii) the modification by the State of the Equipment furnished hereunder or the Software; or (iv) the combination or utilization of Software furnished hereunder with non-contractor supplied Software.

14.3.5 Certification

Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

14.4 Federal Sanctions or Penalties

Contractor shall not cause, through Contractor's willful or negligent errors or omissions, Federal penalties to be assessed against the State or the loss to the State of Federal funding. Contractor shall indemnify the State for any funds the State pays to the Federal government or any lost Federal funding to the extent sanctions, penalties or other delays resulted from or were caused by the willful or negligent errors or omissions of the Contractor.

14.5 Limitation of Liability

1. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section, "Purchase Price" will mean the aggregate Contract price.
2. The foregoing limitation of liability shall not apply (i) to liability under the General Provisions, entitled "Patent, Copyright and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney fees that the State becomes entitled to recover as a prevailing party in any action.
3. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection 1 above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
4. In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work, or (ii) to the extent that Contractor's liability for such damages arises out of subparagraph 2(i), (ii), or (iv) above, or (iii) to the extent liability is for Federal sanctions or penalties.

14.6 Contractor's Liability for Injury to Persons or Damage to Property

1. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods and services either at the Contractor's site or at the State's place of doing business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
2. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the Contractor during the Contract.

15 TERMINATION

15.1 Contractor's Rights of Termination

Contractor may terminate this Contract if the State has materially breached this Contract, provided Contractor has given the State Notice of such breach, and the State has failed to Cure such breach within 60 days after receipt of such Notice. California Counties are independent and separate legal entities from the State. Any County's preparedness, cooperation, and success in becoming operational with the CMIPS II application as scheduled are beyond the control of the Contractor or the State. The State shall not be liable to the Contractor for breach or default under the Contract if a County does not become or is late in becoming operational with the CMIPS II system as scheduled.

15.2 State's Rights of Termination

15.2.1 Funding Changes

The State may immediately terminate this Contract, in whole or in part, and Contractor shall relieve the State of any further obligation therefore, effective upon delivery of Notice to Contractor, or at such later date as may be established in writing by the State, under any of the conditions described below in this Paragraph of this Contract. A termination by the State pursuant to this Paragraph of this Contract shall not be deemed a termination for default and Contractor shall be entitled only to payments in accordance with the terms of this Contract for Services rendered prior to the effective date of termination. Termination pursuant to this Paragraph may occur as a result of any of the following conditions:

1. Funding for this Contract is not appropriated, not obtained, reduced, changed, eliminated or otherwise modified by applicable Federal or State funding sources; or
2. Federal or State statute, regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

15.2.2 Default

The HHSDC Director or designee, by Notice to Contractor, may, subject to the paragraph 16.16, Force Majeure, contained herein, immediately terminate this Contract in whole or in part in the event of a default by Contractor and the State shall be relieved of the payment of consideration to Contractor if Contractor, for causes within the control of the Contractor, fails to correct or Cure within 30 days of receipt of a Cure Notice issued by the State, any of the failures or events set forth below:

1. If Contractor fails to provide Services or Deliverables called for by this Contract within the time specified in the Master Work Plan or this Contract, or any extension thereof, including without limitation:
 - a. If the Contractor fails to achieve Acceptance of each of the Deliverables.
 - b. If Contractor fails to achieve Acceptance of each of the Deliverables after a Corrective Action Plan has been implemented for that Deliverable.

- c. If the Contractor fails to achieve Acceptance of the milestone reviews as required by the SOW Paragraph 5.3.4.3, Milestone Reviews.
 - d. If the System fails to achieve one or more of the Performance Standards as required by this Contract for three consecutive calendar months.
 - e. If Contractor habitually and regularly fails to provide the Services, as required by this Contract, within the time specified and agreed to by the Contractor and the State and in accordance with this Contract; or
 - f. If Contractor fails to perform any other provision of this Contract, or so fails to pursue the Services as to endanger timely performance of this Contract;
 - g. If Contractor habitually and regularly fails to correct Priority Level 1 and 2 Defects as set forth in SOW Paragraph 3.2.4, Issue Management, within the timelines set forth in SOW Paragraph 4.3.4, Defect Corrections.
 - h. If Contractor fails or refuses to perform a Work Authorization issued by the State.
- 2. If any license or certification required by law or regulation to be held by Contractor to provide the Services required by this Contract is for any reason denied, revoked, suspended, or not renewed;
 - 3. If the State determines that the health, safety, or welfare of persons receiving Services may be in jeopardy by the Contractor's failure to perform;
 - 4. If the State finds in its sole discretion that Contractor has engaged in fraudulent acts in connection with the performance of this Contract;
 - 5. If the State finds in its sole discretion that there is a violation by the Contractor of the State's then-current conflict of interest rules, unless otherwise waived by the State in writing.

In the event any goods furnished or services provided by the Contractor in the performance of this Contract should fail to conform to the requirements of this Contract, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of the Services, without expense to the State, and immediately replace all such rejected items with other conforming with the Contract.

In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.

The State, may, in its sole discretion, extend the Cure period in writing upon a showing by the Contractor that the cure period should be extended for reasons beyond the Contractor's reasonable control.

15.2.3 Gratuities

The State may, in addition to its other rights, immediately terminate this Contract for default if any gratuities in the form of entertainment, gifts or otherwise, were offered or given by Contractor to any officer, agent, representative, or an employee of the State, with a view towards securing this Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to this Contract.

15.2.4 Inability to Correct Defects during Cure Period

If Contractor is unable to: (a) correct all Priority Level 1 or 2 Defects within the number of days required in a Cure Notice; (b) correct all Defects within the number of days required in the Project Work Plan for User Acceptance Testing; (c) correct all Defects in the System during Pilot Operation within the number of days as required by this Contract; (d) satisfy all CMS requirements for the System within the number of days as required by this Contract; (e) correct all Defects in the System and otherwise complete implementation in accordance with the requirements of this Contract during Statewide Implementation Review, the State may, at its option (i) immediately terminate this Contract for default; (ii) require Contractor to provide a replacement Deliverable or Service associated with the Defects within a specified time period, or (iii) require Contractor to continue working until the Defects are corrected or eliminated. If the State returns a Deliverable to Contractor, Contractor shall immediately return to the State all payments made to Contractor for the Deliverable, if any. Title to, and all other rights in, Deliverables returned by the State shall be returned to the Contractor upon full refund of amounts paid.

15.2.5 Inability to Correct Defects during User Acceptance Testing

If Contractor is unable to correct all identified Defects in the System within the number of days required by Exhibit 1, Statement of Work, Paragraph 4.3.4, Defect Corrections, and the Master Work Plan for the State to complete User Acceptance Testing the State may, at its option: (i) immediately terminate this Contract, which termination shall be deemed to be due to Contractor's default, without penalty to the State and, at the State's option, require Contractor to remove any Equipment at the Sites; (ii) request Contractor to provide replacement Software or a replacement System; (iii) or continue performing User Acceptance Tests on the System and require Contractor to continue until Defects are corrected. In the event the State terminates this Contract as provided in this Paragraph 15.2.5, Contractor shall return to the State all amounts paid by the State for the System, if any, and for Deliverables which the State returns to the Contractor. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor upon full refund of any amounts paid. The State's option to terminate this Contract for the inability of Contractor to correct Defects shall remain in effect until successful completion of the User Acceptance Tests.

15.2.6 Defects during Pilot Operation

If Contractor is unable to correct all identified Defects in the System during the Pilot Operation within the number of days required by Exhibit 1, Statement of Work, Paragraph 4.3.4, Defect Corrections, and the Master Work Plan, the State may, at its option: (i) immediately terminate this Contract, which termination shall be deemed to be due to Contractor's default, without penalty to the State and, at the State's option, require Contractor to remove any Equipment installed at the Pilot Sites; (ii) request Contractor to provide replacement software and equipment for further pilot operation of the Pilot Counties; (iii) or continue performing Pilot operation for the Counties Pilot System, or (iv) continue performing such Pilot operation on the System and require Contractor to continue until Defects are corrected. In the event the State terminates this Contract as provided in this Paragraph, Contractor shall return to the State all amounts paid by the State for the System, if any, and for Deliverables which the State returns to the Contractor. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor

upon full refund of any amounts paid. The State's option to terminate this Contract shall remain in effect until successful completion of the County Pilots.

15.2.7 Defects during Statewide Implementation Review

If Contractor is unable to correct all identified Defects in the System during Statewide Implementation within the number of days required by Exhibit 1, Statement of Work Paragraph 4.3.4, Defect Corrections, and the Master Work Plan and to otherwise complete Implementation as determined by the Statewide Implementation Review, the State may, at its option: immediately terminate this Contract, which termination shall be deemed to be due to Contractor's default, without penalty to the State and, at the State's option, require Contractor to remove any Equipment installed at the State and County Sites; request Contractor to provide replacement Equipment (software and equipment) or a replacement System, and provide Services to complete Implementation. In the event the State terminates this Contract as provided in this Paragraph 15.2.7, Contractor shall return to the State all amounts paid by the State for the System and Services, if any, and for Deliverables which the State return to the Contractor upon refund of the amounts paid. In addition, in the event of termination by the State as provided above in this Paragraph 15.2.7 of this Contract, Contractor shall assist the State in reconverting its systems and processes to be able to process PCSP/IPW/IHSS Residual transactions and Provider payroll warrants, and Contractor shall be liable for all costs associated with or resulting from such conversion. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor upon full refund of any amounts paid. The State's option to terminate this Contract shall remain in effect until a successful completion of Statewide Implementation.

15.2.8 CMS Requirements

If Contractor is unable to satisfy all CMS requirements for the System within the number of days of the System's Acceptance as required in the Project Work Plan, the State may at its option: (i) immediately terminate this Contract, which termination shall be deemed to be due to Contractor's default, without penalty to the State, and at the State's option; (ii) require Contractor to remove any Equipment at the Sites; (iii) request Contractor to repair the Software for further System Acceptance Tests; or continue performing the System Acceptance Test on the System and require Contractor to continue until all CMS requirements are satisfied. In the event the State terminates this Contract as provided in this Paragraph 15.2.8 of this Contract, Contractor shall return to the State all amounts paid by the State for the System, if any, and all Deliverables the State returns to Contractor. Title to, and all other rights in, Deliverables returned by the State shall return to the Contractor upon full refund of any amounts paid. The State's option to terminate this Contract shall remain in effect until successful completion of the System Acceptance Tests.

15.2.9 Cover

If, in the reasonable judgment of the State, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, and the default is capable of being cured by the State or by another resource without unduly interfering with continued performance by Contractor, the State may provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse the State for the reasonable cost of the Services and of procuring the Services.

If the State terminates this Contract due to Contractor's default or breach, the State shall have the right to procure required Deliverables and Services as defined herein and Contractor shall be liable for and pay for any loss or damages sustained by the State in procuring any such Services or Deliverables to the extent provided by law or equity. The State shall have the right to deduct or withhold from any monies due or that thereafter become due to Contractor for this Contract or to require Contractor to pay the State for all additional costs for such Deliverables and Services which shall include, but not be limited to, the following:

1. Any cost difference between the Deliverables and Services and the replacement Deliverables and Services; and
2. All reasonable administrative costs directly related to the termination including but not limited to the costs of re-procurement.

15.2.10 Wrongful Termination for Default

If, after Notice of Termination for default, it is determined by the State or a court of competent jurisdiction that Contractor was not in default or that Contractor's failure to perform was due to causes beyond its control and without material Error or negligence of Contractor or any of its Subcontractors or suppliers, the Notice of Termination may be deemed by the State to have been issued as a Termination for Convenience, and the rights and obligations of the parties shall be governed accordingly.

15.3 Termination for Convenience

The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. Upon such Notice and in the time designated by the State in its Notice, Contractor shall wind down and cease its services as quickly and efficiently as possible, without performing unnecessary Services and by minimizing negative effects on the State from such winding down and cessation of Services. If this Contract is so terminated, the State shall be liable for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. The State shall be relieved of any further obligations related to such Services.

15.4 Termination by Mutual Agreement

This Contract may be terminated by mutual written agreement of both parties.

15.5 Termination Procedure

15.5.1 Available Rights and Remedies

The rights and remedies of the State provided in this Contract in the event of termination of this Contract for default or convenience, shall not be exclusive, and are in addition to any other rights and remedies by law or equity or under this Contract.

15.5.2 Disposition of Property

In the event of Termination, Contractor shall deliver or convey title to the State or to another entity named by the State any Property specifically produced under this Contract, including without limitation, Developments, the Deliverables, work in process, partially completed plans, drawings, and information as designated by the State. The Contractor shall not be required to deliver any Contractor materials.

15.5.3 Contractor Compensation

In the event of termination for other than Default by the Contractor or Non-appropriation, the State shall pay Contractor the prices stated in this Contract for the Deliverables and Services for which the State has given its Acceptance, subject to the State's rights and remedies herein. If the termination is for convenience, the State shall also pay reasonable charges the Contractor can demonstrate to the satisfaction of the State have resulted from the termination.

15.5.4 Withholds and Offsets

In the event of a termination for default, the State may withhold from any amounts due Contractor for such Deliverables or Services such sum as the State determines to be necessary to protect the State against loss or liability. The State will make a reasonable effort to mitigate damages sustained.

The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

15.5.5 Determination of Amount Due

In arriving at the amount due, Contractor shall deduct all payments to Contractor under the terminated portion of this Contract and any claim which the State has against Contractor under this Contract.

15.5.6 Termination Claims

If the termination is for convenience and the parties are not able to agree on such amounts, Contractor shall submit a termination claim specifying the amounts claimed due because of the termination for convenience together with cost or pricing data supporting the claim. If Contractor fails to file a termination claim within 90 days from the effective date of termination, the State may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay to Contractor the amount determined.

15.5.7 Assistance During Termination

Upon and following any Notice of Termination of this Contract, each party will assist the other party in the orderly Termination of this Contract and the transfer of all assets, tangible and intangible, and of all Services, as may facilitate the orderly, non-disrupted Project continuation of the State. Towards this end, Contractor shall assist the State at the State's request in transitioning the Services to the State or another Contractor in accordance with the Project Closeout Plan as described in Exhibit 1, Statement of Work Paragraph 3.4, Project Closeout.

15.5.8 Contractor Actions After Notice of Termination

After Contractor receives a written Notice of Termination, and except as otherwise directed by the State Project Manager, Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Paragraph of this Contract:

1. Stop work on the date and to the extent specified in a Notice of Termination
2. Place no further orders and enter into no subcontracts for materials, services or facilities except as necessary to complete the portion of the work not terminated
3. Terminate all subcontracts to the extent they relate to the work terminated
4. Settle all outstanding liabilities and provide termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which by the State will be final for purposes of this Paragraph of this Contract
5. Complete performance of the work not terminated
6. Take any action that may be necessary, or as the State may direct, for the protection and preservation of the Property related to this Contract that is in the possession of Contractor and in which the State has or may acquire an interest and to mitigate any potential damages or requests for adjustment or termination settlement to the maximum practical extent.

16 GENERAL PROVISIONS

16.1 Americans With Disabilities Act

Contractor assures the State that it shall comply with the Americans with Disabilities Act (ADA) of 1990 Public Law 101-336, 42 U.S.C. 12101 et seq., which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA (28 C.F.R. Part 35).

16.2 Assignment

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

16.3 Assignment of Antitrust Actions

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

1. In submitting a bid to State, the Bidder [i.e., Contractor] offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the State pursuant to the solicitation . Such assignment shall be made and become effective at the time the State tenders final payment to the bidder.

2. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
3. “Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured hereby, or (b) the assignee declines to file a court action for the cause of action.”

16.4 Attorneys’ Fees and Costs

If any litigation is brought to enforce, or arises out of, this Contract or any term, clause, or provision hereof, the prevailing party shall be awarded its reasonable attorney’s fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered, as well as subsequent to judgment, in obtaining execution thereof.

16.5 Authority

Contractor shall have no authority to bind, obligate, or commit the State by any representation or promise.

16.6 Authorization

Contractor warrants that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of Contractor has been properly authorized and empowered to enter into this Contract and to bind Contractor to each and every one of the terms, conditions, and obligations set forth herein.

16.7 Binding Effect

Each party agrees that this Contract binds it and each of its officers, employees, agents, independent contractors, and representatives.

16.8 Child Support Compliance Act

Contractor acknowledges in accordance with Public Contract Code Section 7110 that:

1. Contractor recognizes the importance of child and family support obligations and shall comply with all applicable State and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and
2. Contractor to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

16.9 Safety and Accident Prevention

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

16.10 Order of Precedence

In the event that there is a conflict between the documents comprising this Contract, the order of precedence shall be as follows:

1. Contract Amendments;
2. Work Authorizations, Maintenance Releases and Equipment substitutions;
3. The terms and conditions in the body of this Contract;
4. The Exhibits to this Contract, excluding Contractor's Final Proposal;
5. The Deliverables provided pursuant to Exhibit 3, Deliverables and Milestones;
6. All other Deliverables;
7. The RFP; and
8. Contractor's Final Proposal in response to RFP HHSDC-4130-141A, Case Management, Information and Payrolling System (CMIPS II).

16.11 Conflict of Interest

16.11.1 Appearance of Conflict

Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with Contractor's fully performing his/her obligations to the State under the terms of this Contract. Contractor shall inquire and require disclosure by its Staff and Subcontractors of all activities that may create an appearance of conflict. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State Project Manager a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement setting forth the relevant details for the State consideration and direction shall be grounds for Termination of this Contract.

16.11.2 Current or Former State Employees

Contractor acknowledges it is aware of and shall take no action which causes State employees or officers to violate the following provisions regarding current or former State employees. If Contractor has any questions on the status of any person rendering services or involved with this Contract, Contractor will contact the State Project Manager immediately for clarification:

1. Current State Employees (PCC 10410)

- a. No State Officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency unless the employment, activity, or enterprise is required as a condition of regular State employment.
 - b. No officer or employee shall contract on that person's own behalf as an independent contractor with any State agency to provide goods or services.
2. Former State Employees (PCC 10411)
- a. For the two-year period from the date of leaving State employment, no former State officer or employee may enter into an Contract in which that person was engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making-process relevant to this Contract while employed in any capacity by any State agency.
 - b. For the 12-month period from the date of leaving State employment, no former State officer or employee may enter into an agreement with any State agency if that person was employed by that State agency in a policy-making position in the same general subject area as the proposed agreement within the 12-month period prior to that person leaving State service.

16.12 Dispute Resolution

16.12.1 Process

When a bonafide dispute arises between the State and Contractor both parties shall attempt to resolve the dispute pursuant to this section 16.12.1. The parties shall deal in good faith and attempt to resolve potential disputes informally. Informal dispute resolution shall be initiated by the State Project Manager and Contractor Project Director each providing Notice to the other of the dispute, with the Notice specifying the disputed issues and the position of the party submitting the Notice. The State Project Manager and the Contractor Project Director shall use their best, good faith efforts to resolve the dispute within 10 days of submission by either party to the other of such Notice of dispute, or such other time as both parties shall agree upon.

If the dispute persists, and a final decision has not been rendered by the State, Contractor may submit to the State Project Manager a written demand for a final decision regarding the disposition of any dispute related to or involving this Contract. The State Project Manager will submit Contractor's request for a final decision to the Project Steering Committee who shall render the final decision. The Project Steering Committee shall include at least the Assistant Director of HHSDC, the Deputy Director of the Department of Social Services, and the Deputy Director of the Department of General Services Procurement Division, Purchasing Manager.

Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a person authorized to act on behalf of and to bind the Contractor indicating that the demand is made in good faith, that the data supporting the cost adjustment are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the

Project Steering Committee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division.

Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.

16.12.2 Final Decision

Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the members of the Project Steering Committee or, if an appeal was made, by the Deputy Director Procurement Division. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

16.13 Drug-Free Workplace Certification

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug Free Workplace Act of 1990 (California Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

16.14 Entire Agreement

The State and Contractor acknowledge and agree to the following:

1. That they have read this Contract, understand it and agree to be bound by its terms and conditions;
2. That this Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

16.15 Sweatfree Code of Conduct

1. Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to this Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Industrial Relations website located at www.dir.ca.gov and Public Contract Code Section 6108.
2. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (1).

16.16 Force Majeure

Except for defaults of subcontractors at any tier, neither the Contractor nor the State shall be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the non-performing Party. Examples of such causes include, but are not limited to:

1. Acts of God or of the public enemy, and
2. Acts of the federal, State or County government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtained from other sources in sufficient time for the Contractor to meet the required delivery schedule.

16.17 Applicable Law

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California.

16.18 Headings

The headings throughout this Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

16.19 Independent Contractor Relationship

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees of the State.

16.20 Compliance With Statutes and Regulations

1. Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
2. This Contract is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

16.21 Litigation

16.21.1 Notice of Litigation

Contractor shall promptly notify the State in the event that Contractor learns of any actual litigation in which it is a party or a defendant in a case which involves Services provided under this Contract. Contractor shall promptly, after being served with a summons, complaint, or other pleading which has been filed in any Federal or State court or administrative agency, deliver copies of such document(s) to the HHSDC Director. The term "litigation" includes but is not limited to an assignment for the benefit of creditors and filings in bankruptcy, reorganization, or foreclosure.

16.21.2 Costs

If the State shall, without any fault on its part, be made a party to any litigation commenced by or against Contractor in connection with this Contract, Contractor shall pay all costs and expenses incurred or imposed on the State, including attorneys' fees, to the extent arising from the acts or omissions of Contractor, its officers, employees, agents, of Subcontractors.

16.22 Maintenance and Audit of Records

16.22.1 Maintenance of Records

Contractor and its Subcontractors shall maintain a complete file of all records, documents, communications, and other materials which pertain to the Project or the delivery of Services under this Contract. These records shall be maintained according to generally accepted accounting principles and shall be readily separable from other Contractor records. Contractor shall maintain for a period of six years after the expiration or termination of this Contract the above-described records and records that are sufficient to:

1. Document the performance of all acts required by this Contract;
2. Substantiate Contractor's statement of its organization's structure, tax status, capabilities, and performance;
3. Demonstrate accounting procedures and practices which sufficiently and properly reflect all expenditures made by Contractor to perform under this Contract, and all direct and indirect costs of any nature invoiced in the performance of this Contract;
4. Ascertain that personnel policies, procedures and practices were in compliance with this Contract and applicable State and Federal law; and
5. Ascertain that all taxes and insurance required by State and Federal law and by the terms of this Contract were paid by Contractor.

16.22.2 Right to Audit

Contractor agrees that persons representing the State, including without limitation, the Health and Human Services Data Center, California Department of Social Services, Department of General Services, the California Department of Finance, the California Bureau of State Audits, and the Federal government, including without limitation, U. S. Department of Health and Human Services, CMS, the U.S. Comptroller General, or their designated representative(s) shall have the right to audit, inspect, review and copy any records and supporting documentation pertaining to performance of, compliance with, or quality assurance under this Contract at any time during or after the performance of this Contract up to six years after final payment under this Contract, or for such further period as may be agreed to by the Parties, as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the Federal or State government has begun but is not completed at the end of the six year period, or if audit findings have not been resolved after a six year period, the materials shall be retained until the resolution of the audit findings Contractor agrees to allow the person(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records.

16.22.3 Notice of Review

Whenever reasonably possible, the State shall give Contractor notice of any monitoring, auditing, observation, or visits by authorized persons to Contractor's place(s) of business. Such audit may include an audit of the books and records of Contractor, or any of its Subcontractors or prospective Subcontractors, which are related to the cost or pricing data to the extent required by Federal or State laws or regulations and this Contract or any subcontracts. Upon notification, except in exceptional circumstances, by the State to Contractor during any working day between the hours of 8:00 a.m. - 5:00 p.m., Pacific Time, all documentation, including accounting records, related to this Contract shall be available for and subject to review, inspection, copying (at the State's expense), and audit by the State or the U.S. Department of Health and Human Services, or other personnel duly authorized by the State.

16.22.4 Data and Materials Property of the State

All Data records, documents, communications, and other materials developed and used in the performance of this Contract shall be the Property of the State unless otherwise specified herein

and shall be maintained by Contractor and made, to the extent reasonably feasible, accessible within Sacramento County on behalf of the State, for a period of six years from the date of final payment under this Contract, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed with the following qualification: If an audit by or on behalf of the Federal or State government has begun but is not completed at the end of the six year period, or if audit findings have not been resolved after a six year period, the materials shall be retained until the resolution of the audit findings.

16.22.5 Subcontracts

The records retention, review, inspection, audit, interview, copying, and other requirements of Paragraph 16.22 shall be incorporated by Contractor in all of its subcontracts.

16.23 Contract Modification

No amendment or variation of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement, not incorporated in the Contract is binding on any of the parties.

16.24 Nondiscrimination

During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (including cancer), age, marital status, use of family and medical care leave and pregnancy disability leave. Contractor and its Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its Subcontractors shall give written notice of their obligations under this Paragraph to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this Paragraph in all subcontracts to perform work under this Contract.

16.25 Notice of Delay

When Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, Contractor shall, within five working days, give written Notice thereof, including all relevant information with respect thereto, to the State.

16.26 Notices

Notice will deemed to be given by the parties under this Contract if in writing and delivered personally or by messenger, or mailed by first-class, registered, or certified mail, postage

prepaid, to the addresses noted below in this Paragraph of the Contract. Each party will provide Notice to the other of changes to such addresses.

Notice Address for Contractor:

Notice Address for the State: State Project Manager
CMIPS II Project
Health and Human Services Data Center
P.O Box 168025
Sacramento, CA 95816

16.27 Publicity

Contractor shall not refer to the State of California, any office, agency, or officer thereof, or any State employee, including the head of the State, the State procurement officer, or to the Services or Deliverables, or both, provided under this Contract, in any of Contractor's brochures, advertisements or other publicity of Contractor without the prior written consent of the State Project Manager. Contractor agrees to submit to HHSDC's Director all advertising, sales promotions, news releases, and other publicity matters relating to this Contract or any Deliverable or Service furnished by Contractor wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in State's judgment, be inferred or implied. All media contacts with Contractor about the subject matter of this Contract shall be referred to the State Project Manager.

16.28 News Releases

Unless otherwise exempted, news releases pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

16.29 Remedies

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

16.30 Severability

The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

16.31 Subcontractors

16.31.1 Process

Contractor may, with prior written permission from the State Project Manager, enter into subcontracts with third parties for the performance of any part of Contractor's duties and obligations. Any such permission may be rescinded for reasonable cause. Subcontractors identified in Contractor's Proposal shall be deemed to have prior written permission. Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor or any software manufacturer or provider. The State reserves the right to reject or refuse admission to any Contractor or Subcontractor personnel whose workmanship, in the reasonable judgment of the State, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the State for any breach in the performance of Contractor's duties. Any permitted Subcontractor must submit to the State a tax clearance certificate from the Franchise Tax Board showing that any and all delinquent taxes have been paid. Subcontracts permitted by the State shall be subject to the requirements of this Contract.

16.31.2 Subcontractor Warranty

Contractor warrants and agrees that any subcontract resulting from its performance under the terms and conditions of this Contract shall include a provision that the Subcontractor shall abide by the terms and conditions hereof, as well as all other applicable Federal and State laws, and rules and regulations pertinent hereto that have been or may hereafter be established. Also, Contractor warrants and agrees that all subcontracts shall include a provision that the Subcontractor shall indemnify and hold harmless the State. Any contract between Contractor and its Subcontractors shall require the Subcontractors to adhere to the same Performance Standards and other standards required of Contractor. Subcontractors must be qualified, as demonstrated by receiving professional certification(s) and license(s), to work on any Equipment for which their services are obtained.

16.32 Reference Check on Contractor and Subcontractor Staff

Due to the confidential nature of the information and materials which will be accessible to Contractor, the State may conduct reference checks on Contractor Staff to be used to provide the Services. The State also reserves the right to conduct criminal history, background checks, and fingerprint checks on Contractor Staff. The State reserves the right in its sole discretion to reject and require replacement of Contractor Staff from the Project as a result of information produced by any such checks.

16.33 Survival

The terms, conditions, and warranties contained in this Contract that by their sense and content are intended to survive the performance hereof by the parties hereunder shall so survive the completion of the performance, cancellation or termination of this Contract. In addition, the terms of Paragraphs 7.4, 10, 11, 12, 13, 14, 15, and 16 (Four-Digit Date Compliance, Insurance, State Property, Confidential Information, Ownership and Rights, Indemnifications and

Limitation of Liability, Termination, and General Provisions) of this Contract shall survive the termination of this Contract.

16.34 Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and Contractor. Nothing contained in this Contract shall give to or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any person or entity, other than the State or Contractor, receiving Services or Benefits shall be deemed an incidental beneficiary only.

16.35 Counties are Independent Entities

California Counties are independent and separate legal entities from the State. As a result, any particular County's preparedness, cooperation, and success in becoming operational with the CMIPS II application is beyond the control of Contractor or the State. The State shall not be liable to Contractor or in default under this Contract if a County is not prepared or is late in becoming operational with CMIPS II as scheduled.

16.36 Waiver of Rights

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

16.37 Water or Air Pollution Violation

Under the State laws, Contractor shall not: (1) violate any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) be subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally be determined to be in violation of provisions of Federal law relating to air or water pollution.

16.38 Priority Hiring Considerations

Contractor shall give priority consideration in filling vacancies in positions funded by this Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

16.39 Follow-On Contracts

16.39.1 Prohibition

If the Contractor or its affiliates provided Technical Consulting and Direction (as defined below), the Contractor and its affiliates: (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with

any subject of such Technical Consulting and Direction; and (ii) will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.

“Technical Consulting and Direction” means services for which the Contractor received compensation from the State and includes: (i) development of or assistance in the development of work statements, specifications, solicitations or feasibility studies; (ii) development or design of test requirements; (iii) evaluation of test data; (iv) direction of or evaluation of another contractor; (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or (vi) provisions of formal recommendations regarding any of the above. For purposes of this Paragraph, “affiliates” are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.

16.39.2 Application

The restrictions set forth in this Paragraph are in addition to conflict of interest restrictions imposed on public contractors by California law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this Paragraph, even if enacted after execution of this Contract.

16.40 National Labor Relations Board Certification

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a Federal court has been issued against the Contractor within the immediately preceding two-year period because of Contractor’s failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

16.41 Recycling

Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

16.42 Expatriate Corporations

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10826 and 10826.1, and is eligible to contract with the State.

16.43 Domestic Partners

Contractor certifies that it is in compliance with PCC Section 10295.3 with regard to benefits for domestic partners. If this Contract is executed or amended on or after July 1, 2004 and prior to

January 1, 2007, Contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with PCC Section 10295.3.

16.44 Use Tax Collection

In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's reseller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

EXHIBIT 1: STATEMENT OF WORK

Intentionally left blank

EXHIBIT 2: SYSTEM REQUIREMENTS

Intentionally left blank

EXHIBIT 3: DELIVERABLES AND MILESTONES

Intentionally left blank

EXHIBIT 4: RATES AND PRICING

Intentionally left blank

EXHIBIT 5: CERTIFICATIONS

I, the official named below CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to and do legally bind Contractor to comply with the clauses listed below. This certification is made under the laws of the State of California.

Name of Contractor/Company:

Federal ID Number:

Address:

Officials Name (Print):

Signature:

Title

Executed in the County of _____, on this Date _____

1. Statement of Compliance

Contractor has, unless exempted, complied with the nondiscrimination program requirements (GC 12990 (a-f) and CCR Title 2, Section 8103). Refer to General Terms and Conditions, Paragraph 16, General Provisions.

2. Drug-Free Workplace

Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - i) The dangers of drug abuse in the workplace;
 - ii) The person's or organization's policy of maintaining a drug-free workplace;
 - iii) Any available counseling, rehabilitation and employee assistance programs; and
 - iv) Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide that every employee who works on the Contract will:
 - i) Receive a copy of the company's drug free policy statement; and
 - ii) Agree to abide by the terms of the company's statement as a condition of employment on this Contract.

Failure to comply with these requirements may result in suspension of payments under this Contract or termination of this Contract or both and Contractor or grantee may be ineligible for award of any future State contracts if the Director of HHSDC or designee determines that any of the following has occurred: (1) Contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. National Labor Relations Board

Contractor certifies that no more than one (1) final, unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296)

4. Worker's Compensation

Contractor certifies adherence with the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this Contract.

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

Contractor certifies adherence with the regulations implementing Executive Order 12549, Debarment and Suspension, 29 C.F.R. Part 98, Section 98.510, Participant's Responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160 to 19211).

6. Certification Regarding Lobbying

Contractor certifies, to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the above-signed, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the above-signed shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The above-signed shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreement) and that all subrecipients shall certify and disclose accordingly.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made and entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT 6: PERFORMANCE BOND OR LETTER OF CREDIT

Intentionally left blank

EXHIBIT 7: FEDERAL ASSURANCES—NONCONSTRUCTION PROGRAMS

Contractor shall at all times during the term of this Contract strictly adhere to all applicable federal and State laws and implementing regulations as they currently exist and may hereafter be amended. Contractor acknowledges that the following laws are included into (incorporated by reference) into this Contract:

- | | |
|--|------------------------------------|
| 1. Age Discrimination Act of 1975 | 42 U.S.C. ss 6101 et seq. |
| 2. Age Discrimination in Employment Act of 1967 | 29 U.S.C. ss 621-634 |
| 3. Americans with Disabilities Act (ADA) | 42 U.S.C. ss 12101 et seq. of 1990 |
| 4. Equal Pay Act | 29 U.S.C. s 206(d) |
| 5. Immigration Reform and Control Act of 1986 | 8 U.S.C. s 1324b |
| 6. Section 504 of the Rehabilitation Act of 1973 | 29 U.S.C. s 794 |
| 7. Title VI of the Civil Rights Act of 1964 | 42 U.S.C. s 2002d |
| 8. Title VII of the Civil Rights Act of 1964 | 42 U.S.C. s 2000e |
| 9. Title IX of the Education Amendments of 1972 | 20 U.S.C. ss 1681, et seq. |
| 10. Section 306 of the Clean Air Act | |
| 11. Section 508 of the Clean Water Act | |

Contractor will not discriminate against any person on the basis of race, color, national origin, age, sex, religion, or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions, in performance of work under this Contract, and all relevant Sections of:

1. Executive Order 11246, as amended by Executive Order 11375.
2. Department of Labor Relations (41 C.F.R. Part 60)
3. Section 503 of the Rehabilitation Act of 1973, as amended.
4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1970.
5. The Drug Abuse Office and Treatment Act of 1972.
6. The Comprehensive Alcohol Abuse and Alcoholism Treatment Act of 1970.
7. Sections 523 and 527 of the Public Health Services Act of 1912.
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. s 3601).

Contractor shall also comply with any and all laws and regulations prohibiting discrimination in the specific programs which are the subject of this Contract. In consideration of and for the purpose of obtaining any and all federal or State financial assistance, Contractor makes the following assurances:

1. At all times during the performance of this Contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of service, programs, or activities performed by Contractor, or be subjected to any discrimination by Contractor.

RFP – HHSDC 4130-141A
Case Management, Information and Payrolling System (CMIPS II)
Section 11 –Contract

2. Contractor shall take all necessary affirmative steps, as required by 45 C.F.R. s 92.36(e), to assure that small and minority businesses and women's business enterprises are used, when possible, as sources of supplies for Equipment, and Services purchased under this Contract.
3. As required by Executive Order 12549, Contractor certifies to the best of its knowledge and belief that it, its principals, agents, and Subcontractors:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of this Contract by a government entity, either federal, State, or local.
 - b. Have not within a three year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, State, or local) with the commission of any of the offenses enumerated in paragraph b of this section; and
 - d. Have not within a three year period preceding this Contract had one or more contracts with a public agency terminated for cause for default.
 - e. Contractor certifies that it will provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and implemented at 45 C.F.R. Part 76, Subpart F for grantees, as defined at 45 C.F.R. Part 76, Sections 76.605 and 76.610.

EXHIBIT 8: VENDOR’S PROPOSAL

Intentionally left blank

EXHIBIT 9: GLOSSARY AND ACRONYMS

Intentionally left blank

EXHIBIT 10: HIPAA BUSINESS ASSOCIATE AGREEMENT

Intentionally left blank